

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

FINJAN, INC., ) CV-17-00072-BLF  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) APRIL 21, 2020  
)  
CISCO SYSTEMS, INC., ) PAGES 1-69  
)  
DEFENDANT. )  
)  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SUSAN VAN KEULEN  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: BY: **JUANITA R. BROOKS**  
**MEGAN CHACON**  
**ROGER DENNING**  
FISH & RICHARDSON P.C.  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130

FOR THE DEFENDANT: BY: **MATTHEW CHRISTOPHER GAUDET**  
**LOUIS NORWOOD JAMESON**  
DUANE MORRIS - ATLANTA  
1180 WEST PEACHTREE ST  
SUITE 700  
ATLANTA, GA 30309

APPEARANCES CONTINUED ON THE NEXT PAGE

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

APPEARANCES CONTINUED:

FOR THE PLAINTIFF:

**BY: AAMIR ABDULQADER KAZI**  
FISH AND RICHARDSON P.C.  
1180 PEACHTREE ST, 21ST FLOOR  
ATLANTA, GA 30309

FOR THE DEFENDANT:

**BY: JOSEPH ANDREW POWERS**  
DUANE MORRIS LLP  
30 SOUTH 17TH ST.  
PHILADELPHIA, PA 19103

1 SAN JOSE, CALIFORNIA

APRIL 21, 2020

2 P R O C E E D I N G S

3 (COURT CONVENED AT 10:00 A.M.)

4 THE CLERK: YOUR HONOR, ARE YOU READY?

5 THE COURT: I AM. WHY DON'T YOU GO AHEAD AND CALL  
6 THE CASE.

7 THE CLERK: THESE PROCEEDINGS WILL ALSO BE RECORDED  
8 USING THE AT&T SERVICE. THERE WILL BE A SLIGHT DELAY AND THEN  
9 AN AUTOMATED VOICE CONFIRMING THE RECORDING. PLEASE STAND BY  
10 FOR THAT.

11 CALLING CASE NUMBER 17-CV-72.

12 FINJAN, INC. VERSUS CISCO SYSTEMS, INCORPORATED.

13 THIS WILL BE A TELEPHONIC HEARING. ONLY COUNSEL AND  
14 JUDGE VAN KEULEN MAY SPEAK. PARTIES AND MEMBERS OF THE PUBLIC  
15 MUST REMAIN ON MUTE.

16 COUNSEL FOR PLAINTIFF, PLEASE IDENTIFY YOURSELF FOR THE  
17 RECORD.

18 MS. BROOKS: GOOD MORNING.

19 THIS IS JUANITA BROOKS FROM FISH & RICHARDSON ON BEHALF OF  
20 FINJAN. I HAVE WITH ME ROGER DENNING, AAMIR KAZI AND MEGAN  
21 CHACON. AND MR. KAZI WILL BE DOING THE ARGUMENT ON BEHALF OF  
22 FINJAN.

23 THE COURT: GOOD MORNING, MS. BROOKS, MR. KAZI.

24 WELCOME ALL, AND THANK YOU FOR PARTICIPATING TODAY BY  
25 PHONE. IT'S A LESS ELEGANT SOLUTION, BUT WE ARE MANAGING TO

1 WORK THROUGH OUR CALENDARS FAIRLY EFFICIENTLY.

2 THE CLERK: FOR DEFENDANTS TODAY.

3 MR. GAUDET: GOOD MORNING, YOUR HONOR.

4 THIS IS MATT GAUDET FOR CISCO. AND ALSO WITH ME ON THE  
5 LINE ARE WOODY JAMESON, AND JOE POWERS.

6 AND I WILL BE PRESENTING THE ARGUMENT TODAY FOR CISCO.

7 THE COURT: THANK YOU, MR. GAUDET. WELCOME BACK.

8 ALL RIGHT. WE ARE GOING TO PROCEED, OBVIOUSLY  
9 TELEPHONICALLY. IF WE RECEIVE ANY BEEPS ON THE LINE FROM  
10 PEOPLE JOINING OR DROPPING OFF, IF YOU HEAR THEM WHILE YOU ARE  
11 SPEAKING, PLEASE PAUSE. I WILL ALSO INTERRUPT THE PROCEEDINGS  
12 AT THAT POINT TO REAFFIRM THAT MADAM COURT REPORTER AND COUNSEL  
13 ARE STILL WITH US.

14 IF I DON'T INTERRUPT WITH THOSE INQUIRIES, THEN MY  
15 COURTROOM DEPUTY WILL ASK THE QUESTION, ON THE OFF CHANCE THAT  
16 I HAVE BEEN CUT OFF.

17 PLEASE DO REMEMBER TO IDENTIFY YOURSELF FOR THE RECORD  
18 EACH TIME THAT YOU SPEAK. AND I KNOW THAT CAN FEEL SOMEWHAT  
19 TEDIOUS, ESPECIALLY AS WE MOVE WELL INTO THE PROCEEDINGS, BUT  
20 IT'S VERY IMPORTANT FOR MS. SUMMER AND FOR MYSELF, THAT WAY WE  
21 WILL BE SURE WE HAVE A CLEAR RECORD.

22 ALL RIGHT. I HAVE REVIEWED CAREFULLY, ALL OF THE PAPERS  
23 THAT WERE SUBMITTED IN SUPPORT OF CISCO'S MOTION TO STRIKE. I  
24 HAVE ACCESS TO ALL OF THE PAPERS ELECTRONICALLY AS WE PROCEED  
25 THIS MORNING. I ALSO HAVE, IN HARD COPY, CISCO EXHIBIT 1 AND 2

1 WHICH WERE REFERRED TO WITH SOME FREQUENCY IN THE PAPERS AS THE  
2 OPERATIVE CONTENTIONS.

3 I HAVE IN HARD COPY IN FRONT OF ME, FINJAN EXHIBIT --  
4 LET'S ME SEE, I WILL DO THEM IN ORDER. I HAVE 5 AND 6 WHICH  
5 ARE THE E-MAILS CHAIN, AND THEN I HAVE EXHIBITS 11 AND 13,  
6 VERSIONS OF THE MEDZIDOVIC REPORT.

7 THOSE DOCUMENTS I HAVE IN HARD COPY, AND THE REST I WILL  
8 BE REVIEWING ELECTRONICALLY. IF YOU SEND ME THERE, JUST GIVE  
9 ME A MOMENT TO CATCH UP WITH YOU. I WILL ALSO CONTINUE TO  
10 REMIND COUNSEL THROUGHOUT THE PROCEEDING TO SPEAK SLOWLY.

11 I KNOW THIS IS DIFFICULT, AND WITHOUT VIDEO YOU CAN'T SEE  
12 ME REACTING TO YOU, SO PLEASE TRY TO REMEMBER TO SPEAK SLOWLY.  
13 I WILL INTERRUPT WHERE I NEED TO, BUT MOST IMPORTANTLY, WE WANT  
14 TO BE SURE THAT WE ARE ABLE TO GET A NICE CLEAN RECORD TODAY.

15 ALL RIGHT. SO CISCO'S MOTION, LET ME GIVE YOU A COUPLE OF  
16 PRELIMINARY COMMENTS. I HAVE A COUPLE OF QUESTIONS, AND THEN  
17 MR. GAUDET, IT'S YOUR MOTION AND YOU WILL LEAD US OFF.

18 AS I UNDERSTAND IT, CISCO IS ASKING THIS COURT TO STRIKE  
19 CERTAIN THEORIES IN THE MEDZIDOVIC REPORT, WHICH IT ARGUES ARE  
20 UNDISCLOSED IN THE CONTENTIONS. PERHAPS THEORY, SINGULAR,  
21 MIGHT BE A BETTER DESCRIPTION. AS I UNDERSTAND IT, THE  
22 INFRINGEMENT THEORY AT ISSUE IS WHETHER THE MOBILE PROTECTION  
23 CODE, THAT'S MPC, CAN BE RESIDENT IN THE SANDBOX RATHER THAN  
24 HAVING TO BE TRANSMITTED TO THE SANDBOX.

25 AS I HAVE DISCUSSED WITH THESE PARTIES THROUGH PREVIOUS

1 MOTION PRACTICE, THE CONTENTIONS DO SET THE PARAMETERS FOR THE  
2 CASE GOING FORWARD, CERTAINLY FOR DISCOVERY, AS WELL AS A GUIDE  
3 FOR EXPERT REPORTS.

4 BACK IN JANUARY, AT THE SUMMARY JUDGEMENT HEARING BEFORE  
5 JUDGE FREEMAN, AT THAT TIME SHE DID DIRECT THE PARTIES TO BRING  
6 ANY ISSUES OF INCONSISTENCIES BETWEEN THE THEN ANTICIPATED  
7 AMENDED REPORT, NOT YET BEFORE HER, AND CONTENTIONS, TO COME  
8 BEFORE ME. THAT IS, IF THERE'S A NEW DESCRIPTION IN THE  
9 REPORT, IT HAS TO TIE BACK TO THE CONTENTIONS. AND THAT, I  
10 THINK SOMEWHAT SETS THE STAGE FOR OUR PROCEEDINGS HERE TODAY.

11 AND MY FIRST QUESTION, MR. GAUDET, IS I BELIEVE CISCO  
12 POINTS OUT IN HIS REPLY PAPERS THAT THE REPORT NOW REFLECTS,  
13 THAT IS THE LATEST REPORT WHICH I'M LOOKING AT IS THE  
14 MARCH 30TH VERSION BECAUSE THAT IS THE LATEST MEDZIDOVIC  
15 REPORT, NOW REFLECTS POTENTIALLY CUT AND PASTE LANGUAGE FROM  
16 THE CONTENTIONS.

17 THAT BEING THE CASE, AT LEAST IN TERMS OF LANGUAGE, THE  
18 REPORT AND CONTENTIONS ARE NOW CONSISTENT. AND IF THAT IS THE  
19 CASE, DOES THAT END MY INQUIRY.

20 SO LET ME START YOU THERE, AND THEN LET'S PROCEED.

21 MR. GAUDET: YES. CAN YOU HEAR ME?

22 THE COURT: I CAN.

23 MR. GAUDET: OKAY. TERRIFIC. THANK YOU, YOUR HONOR.

24 AND TO START THERE, THE -- I GUESS ONE CLARIFYING POINT,  
25 EVEN BEFORE SUMMARY JUDGEMENT, THAT LANGUAGE FROM -- THAT THEY

1 ARE RELYING ON FROM THE OPERATIVE INFRINGEMENT CONTENTIONS,  
2 WHICH IS REALLY PAGE 35 OF OUR EXHIBIT 1, THAT WAS EVEN IN THE  
3 ORIGINAL MEDZIDOVIC REPORT, THE ISSUE THAT AROSE AT SUMMARY  
4 JUDGEMENT. THAT MORE PARTICULARLY, WE BELIEVE JUDGE FREEMAN  
5 REFERRED TO YOU, IS THAT THAT LANGUAGE WASN'T WHAT THEY RELIED  
6 ON TO ANSWER OUR SUMMARY JUDGEMENT BRIEF; INSTEAD, THEY RELIED  
7 ON SEVEN SPECIFIC COMPONENTS.

8 AND SO WHAT JUDGE FREEMAN SAID IN THE TRANSCRIPT, AND  
9 YOUR HONOR -- AND THE CITATIONS FOR THIS ARE, THE FIRST ONE  
10 WOULD BE PAGE 120, THAT THIS IS LINE 6, JUDGE FREEMAN SAID, "SO  
11 BASED ON MY ORDER, THEY WILL HAVE TO ASK JUDGE VAN KEULEN TO  
12 ALLOW A SUBSTITUTION FROM SOMETHING FROM THE CONTENTIONS TO GO  
13 TO THE JURY IN PLACE OF ALL THE ARGUMENTS ABOUT [REDACTED]  
14 [REDACTED] WHICH THEY ARE NOW USING TO DEFEAT SUMMARY  
15 JUDGEMENT, BECAUSE OTHERWISE THEY HAVE PROVIDED ME NO  
16 EVIDENCE."

17 AND SHE SAYS ESSENTIALLY THE SAME THING AGAIN LATER,  
18 YOUR HONOR, IN FACT, IT WAS EVEN CONFIRMED BY FINJAN'S COUNSEL  
19 AT PAGE 158. BECAUSE OTHERWISE, THE FACT THAT THERE IS EVEN AN  
20 IDENTITY BETWEEN INFRINGEMENT CONTENTIONS AND THE EXPERT  
21 REPORT, THAT'S NOT EVEN A NEW DEVELOPMENT, THAT NOBODY EVER  
22 RELIED ON THAT MATERIAL TO TRY TO OVERCOME SUMMARY JUDGEMENT.  
23 INSTEAD, THE CASE GOT REDUCED DOWN TO JUST SEVEN COMPONENTS.  
24 AND THAT WAS AFTER THEY -- FINJAN HAD LOST A MOTION TO STRIKE.

25 AND SO THERE ARE THESE -- THEY START TRYING TO SORT OF

1 COME UP WITH WAYS TO DANCE AROUND THE LOSS OF THE PREVIOUS  
2 REPORT. AND THE ISSUES, JUDGE FREEMAN SAID, IS BASICALLY -- WE  
3 SAID JUDGE, THERE IS NO EVIDENCE LEFT IN THIS RECORD, THE STUFF  
4 THEY WOULD HAVE RELIED ON IS GONE. AND SHE SAID, I'M GOING TO  
5 ASSUME THAT'S NOT THE CASE. I'M GOING TO ASSUME THAT THERE IS  
6 EVIDENCE, THAT THE EVIDENCE THEY ARE POINTING TO, THAT THAT  
7 EQUIVALENT EXISTS. NOW YOU GO TO JUDGE VAN KEULEN AND FIND OUT  
8 IF THAT'S THE CASE OR NOT.

9 IF YOU ACCEPTED THE FORMULATION THE WAY THAT FINJAN IS  
10 PRESENTING IT, A, WE WOULD NEVER HAVE BEEN HERE IN THE FIRST  
11 PLACE; BUT B, IT JUST MAKES THE SUMMARY, AND EVERYTHING ABOUT  
12 THE SUMMARY JUDGEMENT PROCEEDINGS COMPLETELY IRRELEVANT.

13 AND THAT WASN'T WHAT JUDGE FREEMAN SAID. SHE SAID GO FIND  
14 OUT IF THE STUFF YOU ARE RELYING ON ACTUALLY APPEARS IN THE  
15 CONTENTIONS, OR IT'S EQUIVALENT FUNCTIONALTIY.

16 AND SO THIS DOES BECOME A VERY STRAIGHTFORWARD EXERCISE,  
17 YOUR HONOR.

18 THE COURT: WELL, LET ME INTERRUPT YOU THERE,  
19 MR. GAUDET, BECAUSE THE TERMS -- NONE OF THE TERMS OF THOSE  
20 SEVEN THAT WERE AT ISSUE AT SUMMARY JUDGEMENT, THEY HAVE NOW  
21 ALL BEEN REPLACED, RIGHT?

22 A FEW WERE -- SOME WERE, FOUR WERE EXCISED ON SUMMARY  
23 JUDGEMENT. THERE WERE THREE REMAINING TERMS. AND AS I  
24 UNDERSTAND THE PAPERS, FROM FINJAN'S PAPERS, IS THAT THOSE  
25 THREE REMAINING TERMS, [REDACTED] AND



1 [REDACTED] HAVE ALL NOW BEEN REPLACED WITH OTHER LANGUAGE.

2 MR. GAUDET: CORRECT.

3 AND SO THE QUESTION IS -- I'M SORRY.

4 THE COURT: AND SO THAT LANGUAGE, THAT LANGUAGE, THEN  
5 THE REPLACEMENT LANGUAGE, AND THIS I THINK WAS -- THE FACT THAT  
6 THE LANGUAGE WAS REPLACED IS IN MR. HANNAH'S DECLARATION, BUT  
7 THE REPLACEMENT LANGUAGE IS THE SAME LANGUAGE THAT APPEARS IN  
8 THE CONTENTIONS.

9 I THINK THAT'S CORRECT.

10 MR. GAUDET: YES.

11 THEY ARE LISTING -- IN THE SECTIONS WHERE THEY ARE CUTTING  
12 AND PASTING. SO THERE'S ANOTHER SECTION IN THE REPORT THAT'S  
13 LITERALLY THE WHOLE THING VERBATIM, THE CONTENTIONS VERBATIM.  
14 THE AREA THAT THEY ARE CUTTING AND PASTING, THEY ARE TAKING  
15 EITHER THE PHRASE "VIRTUAL ENVIRONMENT AGENT" OR THE PHRASE  
16 THAT THEY USE, FOR [REDACTED] AND WITH THESE  
17 "PARAMETERS TO RUN THE SAMPLE FILE OR URL" AND THEY ARE PASTING  
18 THAT INTO THE AREAS THAT USED TO SAY [REDACTED] THEY JUST  
19 INSERT IN NOW, "VIRTUAL ENVIRONMENT AGENT."

20 AND OUR POINT IS THEY CAN'T DO THAT BECAUSE THAT IS NOT --  
21 THAT ACT OF SAYING THAT WE HAD DISCLOSED SOMETHING IS FUNCTION  
22 EQUIVALENT TO THE [REDACTED] VIA DISCLOSING A VIRTUAL  
23 ENVIRONMENT AGENT, THEY SHOULD NOT BE GRANTED LEAVE TO DO THAT.  
24 OR DEPENDING ON HOW YOU VIEW THE PROCEDURES, THAT EFFORT SHOULD  
25 BE STRUCK, BECAUSE NOTHING ABOUT THE DISCLOSURE OF A VIRTUAL

1 ENVIRONMENT AGENT COULD EVER PUT US ON NOTICE OF [REDACTED]

2 [REDACTED]

3 AND THE SAME IS TRUE WITH THE DISCLOSURE OF PARAMETERS TO

4 RUN THE SAMPLE FILE OR URL, WOULD NEVER PUT US ON NOTICE OF

5 [REDACTED] AND THAT'S THE ONLY ISSUE WE ARE

6 ASKING YOU TO DECIDE.

7 THE COURT: BUT THE TERM [REDACTED] NEVER SHOWED

8 UP IN THE CONTENTIONS. THAT'S NEVER BEEN IN THE CONTENTIONS,

9 CORRECT?

10 MR. GAUDET: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: RIGHT. THE CONTENTIONS HAVE ALWAYS USED

12 THE PHRASE "VIRTUAL ENVIRONMENT AGENT."

13 MR. GAUDET: THAT IS -- WELL, YOUR HONOR, THAT IS

14 LITERALLY TRUE, NOT, I MEAN, IT'S DESCRIBING SOMETHING THAT HAS

15 NOTHING TO DO WITH ANYTHING LIKE A [REDACTED]

16 THE COURT: I UNDERSTAND, MR. GAUDET.

17 MR. GAUDET, I UNDERSTAND. I DIDN'T MEAN TO IMPLY THAT

18 THEY ARE THE SAME THING. BUT MY POINT IS, IS THAT THE

19 LANGUAGE, "VIRTUAL ENVIRONMENT AGENT," HAS ALWAYS BEEN IN THE

20 CONTENTIONS, CORRECT?

21 MR. GAUDET: THAT'S CORRECT, YOUR HONOR.

22 THE COURT: OKAY.

23 AND [REDACTED] SHOWED UP, IT WAS IN -- WHERE DID THAT

24 FIRST SHOW UP, IN ONE OF THE VERSIONS OF THE MEDZIDOVIC REPORT?

25 MR. GAUDET: YOUR HONOR, [REDACTED] SHOWED UP IN

1 THE FIRST VERSION OF THE MEDZIDOVIC REPORT, THAT WAS THE  
2 JULY 2019 MEDZIDOVIC REPORT, WHICH WAS THE ONE THAT WAS -- AND  
3 IT'S A REDLINED VERSION OF IT, OF THE ENTIRE THING, THE  
4 3,000 PAGES, IS ATTACHED AS EXHIBIT 1 TO FINJAN'S BRIEF,  
5 SHOWING THE DIFFERENCES BETWEEN THAT AND THEN THE FIRST  
6 PROPOSED AMENDMENT. BUT THAT IS CORRECT, YOUR HONOR.

7 THE COURT: OKAY. ALL RIGHT.

8 SO I UNDERSTAND YOUR ARGUMENT IS WHERE THEY USED TO TAKE  
9 [REDACTED] THAT IS WHERE FINJAN HAD USED AND REFERRED  
10 TO AND RELIED ON [REDACTED] IN THE EXPERT REPORT, NOW JUST  
11 BECAUSE THEY HAVE CUT AND PASTED IN LANGUAGE AND CHANGED THAT  
12 TO MATCH WORDS IN THE CONTENTIONS, THAT'S NOT -- THAT IS THE  
13 POINT. THAT DOESN'T SOLVE THE PROBLEM.

14 THAT'S WHAT I UNDERSTAND YOU SAYING?

15 MR. GAUDET: THAT IS EXACTLY RIGHT, YOUR HONOR.

16 THE COURT: OKAY.

17 AND -- SO WHAT WOULD BE THE LANGUAGE IN THE REPORT THAT  
18 YOU WOULD HAVE ME STRIKE? I'M A LITTLE -- NOT ENTIRELY CLEAR  
19 WHAT THE OBJECTIVE IS.

20 I OBVIOUSLY -- IN YOUR PAPERS, YOU WANT A THEORY TO BE  
21 STRICKEN. WHAT DO YOU WANT ME TO STRIKE FROM THE REPORT? HELP  
22 ME TO UNDERSTAND.

23 MR. GAUDET: ABSOLUTELY, YOUR HONOR.

24 SO RIGHT NOW THERE ARE -- THERE IS ONE ACTUAL OPERATIVE  
25 REPORT, WHICH IS THE ONE THAT WAS ASSERTED BACK IN JULY 2015

1 THAT WAS SUBJECT TO A MOTION TO STRIKE BUT THERE HAS NOT BEEN  
2 ANY APPROVED AMENDED VERSION.

3 SO STEP 1 --

4 THE COURT: WHEN YOU SAY APPROVED -- EXCUSE ME. WHEN  
5 YOU SAY APPROVED AMENDED VERSION, WHAT DOES THAT MEAN?

6 MR. GAUDET: WELL, IN OTHER WORDS, PARTIES WOULD HAVE  
7 TO GET LEAVE TO AMEND THE REPORT OR GET AN AGREEMENT TO AMEND  
8 THE REPORT. AND FINJAN NEITHER SOUGHT LEAVE TO PRESENT  
9 SOMETHING TO THE COURT AS AN AMENDED VERSION OF THAT ORIGINAL  
10 REPORT, NOR DID FINJAN GET AN AGREEMENT FROM US TO AN AMENDED  
11 VERSION OF THAT REPORT.

12 SO RIGHT NOW WE'VE GOT THE JULY 2019 REPORT AND TWO  
13 PROPOSED AMENDED VERSIONS OF THAT REPORT.

14 SO PROCEDURALLY, WHAT WE ARE ASKING YOU TO DO IS TO STRIKE  
15 THE COMPONENTS FROM THE JULY 2019 REPORT. SO WITH THAT, THOSE  
16 ARE GONE. THAT'S STEP 1.

17 STEP 2 IS TO DENY ANY AMENDMENT, BECAUSE THE ONLY  
18 AMENDMENT WOULD BE BASED ON AN ARGUMENT THAT WHATEVER IT IS  
19 THEY WANT TO PUT IN PLACE OF THOSE WORDS, CAPTURES THE SAME  
20 FUNCTIONALITY. THAT HAS TO BE THE ARGUMENT TO BE ABLE TO MAKE  
21 AN AMENDMENT.

22 AND THAT'S THE ARGUMENT WE ARE PRESENTING TO YOU TODAY.  
23 THE SAME REASON YOU SHOULD STRIKE IT, OUT OF 2019, YOU CANNOT  
24 PERMIT AN AMENDMENT TO THE LATER TWO VERSIONS TO -- AGAIN, IT  
25 WOULD HAVE TO BE PRESENTING THE SAME THEORY, OTHERWISE YOU

1 CAN'T AMEND, SO TO THEN REPLACE THE SPECIFIC COMPONENT NAME  
2 WITH A MORE GENERIC NAME THAT THEY ARE ALLEGING WOULD CAPTURE  
3 THE FUNCTIONALITY.

4 AND THE REASON YOU CAN'T DO THAT IS BECAUSE THE PROPOSED  
5 GENERIC WORD DOESN'T CAPTURE THE FUNCTIONALITY. AND THAT'S  
6 JUST THE BASIC STANDARD, FOR EXAMPLE IN THE DSF TECHNOLOGIES  
7 MANAGEMENT CASE, THAT THE CONTENTIONS HAD TO HAVE PUT US ON  
8 REAL NOTICE. THEY HAD TO HAVE BEEN AS NIT PICKY AS THE NAME OF  
9 THE GAME.

10 SO YOUR HONOR, THAT'S PROCEDURALLY WHAT WE ARE ASKING YOU  
11 TO DO, BUT IT ALL BOILS DOWN TO A SIMPLE COMPARISON OF DID THE  
12 INFRINGEMENT CONTENTIONS FAIRLY DISCLOSE THESE SEVEN ELEMENTS?

13 AND SPECIFICALLY, THEY WERE CONCEDING FOUR OF THEM ARE OUT  
14 AND AREN'T REALLY EVEN TRYING, BUT THE FOUR, THE VIRTUAL -- THE  
15 [REDACTED] WAS THAT DISCLOSED BY THESE REFERENCES THEY  
16 POINT TO AS VIRTUAL ENVIRONMENT AGENT, AND WERE [REDACTED]  
17 [REDACTED] DISCLOSED BY THE PHRASE "PARAMETERS TO RUN THE SAMPLE  
18 FILE OR URL."

19 AND THAT'S WHAT I WAS GOING TO ADDRESS SPECIFICALLY FOR  
20 YOUR HONOR, BUT BEFORE CHANGING TO THAT, I WANT TO BE SURE THAT  
21 I'VE ADDRESSED YOUR QUESTION.

22 THE COURT: SO YOU HAVE, BUT OF COURSE IT LEADS TO  
23 ANOTHER QUESTION WHICH IS, SO THE ARGUMENT OR THE THEORY THAT  
24 YOU WANT ME TO STRIKE OF -- YOUR PAPERS REFER TO THE SUMMARY  
25 JUDGEMENT ARGUMENT. SO THIS IS AN ARGUMENT THAT AROSE IN

1 SUMMARY JUDGEMENT, THAT IS WHERE THE MPC WAS IN THE SANDBOX OR  
2 HAD BEEN TRANSMITTED TO THE SANDBOX?

3 MR. GAUDET: YES.

4 SO LET ME GIVE YOU KIND OF THE BACKGROUND ON THAT, BECAUSE  
5 THERE ARE A LOT OF MOVING PIECES HERE.

6 SO WHEN WE READ THE INFRINGEMENT CONTENTIONS, AND  
7 THROUGHOUT THE CASE, AND FRANKLY IN ALL OF FINJAN'S PREVIOUS  
8 CASES, THE THEORIES ARE ALWAYS THAT MOBILE PROTECTION CODE  
9 TRAVELS FROM A GATEWAY OF SOME SORT, YOU KNOW, SOME DEVICE ON  
10 THE EDGE OF A NETWORK, RIGHT. IF THAT DEVICE --

11 THE COURT: I UNDERSTAND.

12 MR. GAUDET: RIGHT. OKAY.

13 AND SOMETHING THAT WE GENERALLY REFER TO AS A SANDBOX, BUT  
14 IT'S A PRODUCT CALLED EITHER THREATGRID OR SANDBOX, OKAY.

15 FOR THE FIRST TIME IN THE EXPERT REPORTS, THERE WERE  
16 ARGUMENTS THAT ACTUALLY THE MPC COULD BE SOMETHING THAT'S  
17 ALREADY RESIDENT AT THE SANDBOX. AND SO WE MOVED FOR SUMMARY  
18 JUDGEMENT ON BOTH, BOTH STUFF THAT GETS SENT AND STUFF THAT'S  
19 ALREADY RESIDENT.

20 IN THE OPPOSITION PAPERS, FINJAN CONCEDED, AND THIS IS  
21 REFLECTED IN A FOOTNOTE OF THE SUMMARY JUDGEMENT ORDER, THEY  
22 CONCEDED THAT THE THINGS THEY WERE POINTING TO THAT ARE SENT  
23 FROM THE GATEWAY TO THREATGRID OR TO [REDACTED] CANNOT BE  
24 MOBILE PROTECTION CODE, OKAY.

25 SO WITH THAT, A YEAR AGO, I WOULD HAVE TOLD YOU GREAT, THE

1 CASE IS OVER, THAT'S IT, THAT'S THE ONLY THEORY. THEN THE  
2 ENTIRE SUMMARY JUDGEMENT ARGUMENT CAME DOWN TO THESE OTHER  
3 SEVEN THINGS. AND OUR NUMBER ONE POSITION, WAS OBVIOUSLY THAT  
4 THESE WERE NEVER DISCLOSED IN THE INFRINGEMENT CONTENTIONS, AND  
5 YOU KNOW, THERE WAS JUST A GRANTED MOTION TO STRIKE, WHICH IS  
6 KIND OF A MORE OMNIBUS MOTION ABOUT ALL OF THE THINGS THAT  
7 FINJAN HAD TRIED TO AMEND AND DIDN'T GET PERMISSION TO.

8 AND SO BY THE TIME WE THEN GET TO THE ACTUAL SUMMARY  
9 JUDGEMENT HEARING, A CASE THAT WAS ONCE ABOUT SOMETHING VERY  
10 DIFFERENT HAS NOW BECOME JUST ABOUT SEVEN COMPONENTS THAT ARE  
11 ALREADY AT THE -- ALREADY AT THREATGRID. THEY ARE COMPONENTS  
12 OF THREATGRID OR COMPONENTS OF [REDACTED]

13 AND THAT WAS -- AGAIN, WE SAID, THEY CAN'T GET SUMMARY  
14 JUDGEMENT ON THIS. AND JUDGE FREEMAN SAID WELL, I DON'T WANT  
15 TO TAKE UP THE QUESTION OF WHETHER OR NOT THIS IS FAIRLY IN THE  
16 CASE.

17 AND THE EVIDENCE OF THAT, THE EVIDENCE ON WHICH THE  
18 SUMMARY JUDGEMENT ORDER WAS BASED WAS THE JULY 2019 ORIGINAL  
19 EXPERT REPORT. THAT'S THE ONLY EVIDENCE IN THE SUMMARY  
20 JUDGEMENT RECORD.

21 SO SHE SAID, I'M GOING TO ASSUME THAT'S OKAY, OR THAT THE  
22 EQUIVALENT FUNCTIONALITY IS OKAY, RIGHT, AND LET YOU GO TO  
23 JUDGE VAN KEULEN AND SORT OUT WHETHER THERE NEEDS TO BE A  
24 DISPUTE OR AN AMENDMENT OR WHATEVER ELSE THE PROCEDURE WOULD  
25 BE.

1 SO THAT'S -- NOW WE HAVE NOW ARRIVED AT SEVEN ITEMS THAT  
2 ARE ALL LEFT IN THE CASE, THEY ARE ALL RESIDENT AT EITHER  
3 THREATGRID. THREATGRID AND [REDACTED] ARE JUST TWO DIFFERENT  
4 SANDBOXES USED BY CISCO, BUT THEY ARE ALL AT ONE OF THOSE  
5 SANDBOXES.

6 FOR THEM, WE WON SUMMARY JUDGEMENT ON. SO NOW WE ARE DOWN  
7 TO JUST THREE OF THEM. AND THE QUESTION IS, IS THE EVIDENCE ON  
8 WHICH SUMMARY JUDGEMENT WAS GRANTED, NAMELY THE ORIGINAL REPORT  
9 THAT REFERENCED THESE THINGS, SHOULD THAT BE STRUCK OR SHOULD  
10 AN AMENDMENT BE ALLOWED? BECAUSE ACCORDING TO FINJAN, THEY  
11 HAVE DISCLOSED SOMETHING IN THE INFRINGEMENT CONTENTIONS THAT  
12 WOULD FAIRLY HAVE PUT US ON NOTICE OF THOSE THREE ELEMENTS,  
13 [REDACTED]

14 YOUR HONOR, DOES THAT ANSWER YOUR QUESTION?

15 THE COURT: IT DOES.

16 DID NOT JUDGE FREEMAN, WHEN YOU BROUGHT A MOTION TO STRIKE  
17 LAST FALL, WASN'T THE RESULT OF THAT, THAT SHE GAVE FINJAN  
18 LEAVE TO AMEND THE EXPERT REPORT? BECAUSE SHE WAS ANTICIPATING  
19 HAVING HAD AN AMENDMENT BEFORE HER AT THE TIME OF SUMMARY  
20 JUDGEMENT AND THAT DIDN'T WORK OUT THAT WAY, BUT ISN'T THAT  
21 WHERE LEAVE TO AMEND THE REPORT CAME FROM?

22 MR. GAUDET: YOUR HONOR, SHE DID NOT GIVE THEM -- I  
23 WOULD SAY SHE DIDN'T GIVE THEM LEAVE AT ALL. SHE CERTAINLY  
24 DIDN'T GIVE THEM OPEN ENDED LEAVE.

25 WHAT SHE SAID AT THE END OF THAT ORDER WAS THAT SHE WOULD



1 CONSIDER A PROPOSAL BY FINJAN FOR AN AMENDMENT.

2 THAT PROPOSAL CAME A WEEK OR TWO BEFORE THE SUMMARY  
3 JUDGEMENT HEARING TO US, IT NEVER WENT TO THE COURT. WE SAID  
4 WE DON'T AGREE WITH THIS, AND THAT'S WHAT LEAD TO HER SAYING,  
5 WELL, IN EFFECT, HAVE JUDGE VAN KEULEN SORT THIS OUT.

6 SO THE ISSUE YOU ARE IDENTIFYING NAMELY WAS NOT AN  
7 IMPLICIT AVENUE WITH RESPECT TO AMENDMENT. THAT IS EXACTLY THE  
8 ISSUE THAT IS NOW IN FRONT OF YOU, WHETHER THEY CAN AMEND OR  
9 WHETHER SIMPLY THIS MATERIAL SHOULD BE STRUCK AND THERE SHOULD  
10 NOT BE ANY COMPENSATING AMENDMENT.

11 THE COURT: ALL RIGHT.

12 YOU WANTED TO TALK ABOUT PARAMETERS TO RUN THE SAMPLE  
13 FILE.

14 MR. GAUDET: YES, YOUR HONOR. AND I WILL TRY TO MOVE  
15 THROUGH THIS REASONABLY QUICKLY.

16 THE FIRST ONE ON [REDACTED] THAT'S THE FIRST OF THE  
17 THREE. THEY POINT TO SOMETHING CALLED A VIRTUAL ENVIRONMENT  
18 AGENT. BUT YOUR HONOR, THEY NEVER SAY WHAT THAT IS OR HOW IT  
19 HAS ANYTHING TO DO WITH A [REDACTED]

20 AND THE TRUTH IS, THAT'S EVERYTHING YOU NEED TO KNOW.  
21 THAT THEY SHOULD HAVE BEEN ABLE TO LINK THESE THINGS UP WITH  
22 SOMETHING, SOMETHING IN THE RECORD, SOME TESTIMONY OR DOCUMENT  
23 OR SOMETHING.

24 BUT OTHER THAN JUST A BALD ASSERTION, THERE IS LITERALLY  
25 NOTHING ATTACHING THE TWO. AND THAT SHOULD BE ENOUGH FOR US TO

1 WIN THIS MOTION.

2 I'M GOING TO GO INTO A LITTLE BIT OF DETAIL SO YOU HAVE A  
3 CLEAR UNDERSTANDING OF WHY THEY COULDN'T TRY TO MAKE THAT  
4 SHOWING, BUT WE WOULD SAY THAT THEIR FAILURE TO EVEN TRY IS  
5 DISPOSITIVE.

6 BUT WITH RESPECT TO WHAT THESE THINGS ARE, SO THREATGRID  
7 IS A PRODUCT THAT HAS MANY COMPONENTS. IT WILL RECEIVE A FILE,  
8 IT WILL GET THE FILE FROM A GATEWAY, IT WILL DETERMINE IF IT  
9 SHOULD RUN THAT FILE IN A VIRTUAL ENVIRONMENT WITH SOMETHING  
10 THAT EMULATES OR ACTS LIKE AN END POINT.

11 SO IT WILL BE A VIRTUAL ENVIRONMENT THAT WILL HAVE A  
12 MICROSOFT WINDOWS OPERATING SYSTEM IN IT. IT WILL HAVE ALL THE  
13 APPLICATIONS LOADED UP AND THEN IT WILL RUN THAT FILE AS IF IT  
14 WERE ON THE DESKTOP. THAT'S ONE OF THE THINGS THAT IS IN  
15 THREATGRID. THREATGRID HAS OTHER THINGS THAT WILL FIGURE OUT  
16 WHAT TO DO AND WHAT TO REPORT, DEPENDING ON WHAT HAPPENS INSIDE  
17 THAT VIRTUAL ENVIRONMENT.

18 WELL, THE [REDACTED] IS NOT IN THE VIRTUAL  
19 ENVIRONMENT. THE [REDACTED] IS LIKE A TAPE RECORDER THAT  
20 FITS OUTSIDE OF THE VIRTUAL ENVIRONMENT. AND IT'S ALWAYS  
21 RESIDENT, IT'S NEVER TRANSMITTED ANYWHERE. IT'S ALWAYS AT  
22 THREATGRID.

23 SO WITH THAT UNDERSTANDING, AND WITH RESPECT TO THE STUFF  
24 I JUST WENT THROUGH, YOU KNOW, WE CITED, FOR EXAMPLE, THE  
25 TESTIMONY OF MATT WATCHINSKI IN OUR REPLY, BUT WE DIDN'T EVEN

1 NEED TO DO THAT. I MEAN, THAT'S -- THERE IS NO EVIDENCE TO THE  
2 CONTRARY FROM THE OTHER SIDE.

3 BUT WITH THAT UNDERSTANDING, LET'S LOOK TO SEE WHAT  
4 FINJAN'S INFRINGEMENT CONTENTIONS PUT US ON NOTICE OF. SO THIS  
5 IS NOW, YOUR HONOR, OUR EXHIBIT 1, ELEMENT 14-D, AND THAT'S AT  
6 PAGE 35 OF THE CLAIM CHART ITSELF.

7 THE COURT: RIGHT.

8 MR. GAUDET: AND THIS IS WHAT THE PARTIES KEEP  
9 FOCUSING BACK ON.

10 SO THE FIRST THING, TO GO TO THE SECOND PARAGRAPH, RIGHT,  
11 AND IT SAYS -- THE SECOND LINE REFERS TO CISCO AMP FOR NETWORKS  
12 "CAUSE A VIRTUAL ENVIRONMENT AGENT," THEY DON'T TELL US WHAT  
13 THAT IS, BUT THEY SAY IT'S MOBILE PROTECTION CODE TO BE  
14 "EXECUTED WITHIN THE VIRTUAL ENVIRONMENT RUNNING WINDOWS  
15 OPERATING SYSTEM."

16 WE DON'T KNOW WHAT EXACTLY A VIRTUAL ENVIRONMENT AGENT IS,  
17 BUT WE ALREADY KNOW IT CAN'T BE THINGS THAT AREN'T IN THE  
18 VIRTUAL ENVIRONMENT. AND SO WE HAVE ALREADY DISQUALIFIED NOT  
19 JUST [REDACTED] BUT ABOUT ANOTHER HUNDRED DIFFERENT  
20 COMPONENTS, IF NOT THOUSANDS OF DIFFERENT COMPONENTS OF  
21 THREATGRID, THAT ARE NOT IN THE VIRTUAL ENVIRONMENT. SO WE ARE  
22 NOT EVEN LOOKING IN THE RIGHT PLACE.

23 SECOND POINT, IF YOU GO DOWN TO THE FOURTH PARAGRAPH ON  
24 THIS PAGE, OKAY. AGAIN, THEY HAVEN'T TOLD US WHAT A VIRTUAL  
25 ENVIRONMENT AGENT IS, AND READ THIS PARAGRAPH, IN MOSTLY ITS

1 ENTIRETY. "CISCO AMP FOR NETWORKS CONTAIN A SCHEDULER WHICH  
2 RETRIEVES FROM A VIRTUAL ENVIRONMENT COMPONENT POOL, A VIRTUAL  
3 ENVIRONMENT AGENT," WHATEVER THIS THING IS, "FROM MONITORING  
4 AND DETECTING CODE THAT PERFORMS SUSPICIOUS CHANGES TO THE  
5 OPERATING SYSTEM, AND SENDS IT TO THE VIRTUAL ENVIRONMENT."

6 WHATEVER THIS AGENT IS, IT'S SOMETHING THAT IS SENT, THAT  
7 IS TRANSMITTED. THAT'S STRIKE TWO. THE [REDACTED] ALONG  
8 WITH DOZENS OR HUNDREDS OF OTHER COMPONENTS, ARE NEVER SENT  
9 ANYWHERE.

10 SO THIS IS -- TO POINT TO THIS VIRTUAL ENVIRONMENT AGENT,  
11 WHICH ISN'T DEFINED AT ALL, AND SAY THAT SOMEHOW IT COVERS THE  
12 [REDACTED] WOULD NOT WORK IN ANY SCENARIO, BUT THE BREAD  
13 CRUMBS THEY HAVE GIVEN US HERE, DEFINITELY EXCLUDE THE  
14 POSSIBILITY OF THIS EVEN COVERING THE [REDACTED]

15 THE ARGUMENT THEY MAKE IS, WELL, UP AT THE TOP, WE TOLD  
16 YOU THAT VIRTUAL ENVIRONMENT AGENT IS SOMETHING THAT WOULD BE  
17 EXECUTED. IT WOULD BE EXECUTED IN THE VIRTUAL ENVIRONMENT.

18 STEP 1 IS, AGAIN, THE [REDACTED] IS NOT. SO YOU'VE  
19 ALREADY DISQUALIFIED YOURSELF.

20 NUMBER TWO IS, ALL MOBILE PROTECTION CODE IS EVENTUALLY  
21 EXECUTED AT THE VIRTUAL ENVIRONMENT, OR ACTUALLY AT THE  
22 DESTINATION. THAT'S REQUIRED. THAT'S IN THE CLAIM. THE  
23 QUESTION IS, DID YOU TRANSMIT IT FIRST?

24 AND THIS LANGUAGE, OVER, AND OVER, AND OVER AGAIN SAYS YOU  
25 TRANSMITTED IT. AND THAT'S STRIKE TWO.

1 THE OTHER POINT, YOUR HONOR, ON THIS ONE, AND THEN I WILL  
2 MOVE ON TO [REDACTED] IS IF YOU LOOK AT EXHIBIT 4,  
3 AND THIS IS, I CAN DESCRIBE THIS FOR YOU, YOU DON'T NEED TO  
4 PULL THIS UP, BUT EXHIBIT 4 TO OUR BRIEF, THIS WAS ONE OF THE  
5 PROPOSED AMENDMENTS THAT FINJAN WANTED TO MAKE TO THEIR  
6 INFRINGEMENT CONTENTIONS. AND BEGINNING ON PAGE 43 AND  
7 RUNNING --

8 THE COURT: MR. GAUDET, LET ME JUST INTERRUPT BECAUSE  
9 WE DON'T NEED TO GO THROUGH. I DID SEE THAT ARGUMENT IN THE  
10 PAPERS, AND WE DON'T NEED TO RETRACE WHERE WE HAVE BEEN,  
11 ESPECIALLY ON MATERIAL THAT WAS REVIEWED AND RULED UPON QUITE  
12 SOME TIME AGO.

13 MR. GAUDET: OKAY.

14 THE COURT: LET ME JUST BRING YOU BACK, AND I KNOW  
15 YOU WANT TO DO A SIMILAR WALK-THROUGH WITH REGARDS TO [REDACTED]  
16 [REDACTED] AND I DID FOLLOW YOUR ARGUMENTS REGARDING  
17 FAILURE TO DISCLOSE, AS IT WAS SET FORTH IN THE PAPERS, AND I  
18 CAN ASSURE YOU THAT MY PAGE 35 OF YOUR EXHIBIT 1 IS WELL  
19 HIGHLIGHTED, FOLLOWING -- TRACKING THE PAPERS.

20 BUT AGAIN, JUST BRINGING US BACK TO THE LANGUAGE IN THE  
21 REPORT, AND I TAKE YOUR POINT THAT WHAT'S THE OPERATIVE REPORT,  
22 I WANT TO GIVE CAREFUL CONSIDERATION TO JUDGE FREEMAN'S  
23 DISCUSSION AROUND LEAVE TO AMEND, BUT LET'S JUST PUT THAT ASIDE  
24 FOR THE MOMENT. WHY ISN'T THIS A TRIAL OBJECTION?

25 IF I DENY YOUR MOTION BECAUSE I KNEW THE REPORT AND

1 CONTENTIONS NOW TO BE CONSISTENT, BECAUSE THE LANGUAGE  
2 MIRRORS -- AND AGAIN, JUST HYPOTHETICALLY -- THEN YOUR ARGUMENT  
3 THAT THESE WORDS, THE VIRTUAL ENVIRONMENT AGENT, DOES NOT  
4 DISCLOSE AN MPC RESIDENT IN THE SANDBOX. THAT STILL, EVEN WITH  
5 THIS SUBSTITUTION, EVEN WITH THIS CUT AND PASTE FROM THE  
6 CONTENTION, THE REPORT ONLY IS REFERRING TO AN MPC THAT'S  
7 TRANSMITTED.

8 NONE OF THESE WORDS, WHETHER THEY ARE IN THE CONTENTIONS  
9 OR THE LATEST VERSION OF THE REPORT, DISCLOSED AN MPC RESIDENT  
10 IN THE SANDBOX.

11 SO I MEAN, THAT ARGUMENT, YOU STILL HAVE THAT ARGUMENT,  
12 AND WHY ISN'T THAT -- ISN'T THAT A TRIAL OBJECTION? ISN'T THAT  
13 A, JUDGE FREEMAN, DON'T LET THE EXPERT TESTIFY. THE EXPERT  
14 STARTS TO GET TO A QUESTION ON THAT AT TRIAL AND YOU OBJECT AS  
15 BEYOND THE SCOPE OF THE REPORT. ISN'T THAT WHERE THIS IS  
16 DRIVING?

17 MR. GAUDET: YOUR HONOR, I THINK THERE ARE TWO  
18 CRUCIAL RESPONSES TO THAT.

19 THE FIRST ONE IS THAT THIS WOULD, IN EFFECT, REWARD FINJAN  
20 FOR THE CIRCUITOUS PROCESS OF WHAT THEY DID IN THE INFRINGEMENT  
21 CONTENTIONS AND THE AMENDMENT, ON A PATENT THAT THE JUDGE HAS  
22 PREVIOUSLY, JUDGE FREEMAN IN ANOTHER CASE GRANTED SUMMARY  
23 JUDGEMENT IN ITS ENTIRETY. IN THIS CASE, ALMOST ITS ENTIRETY.  
24 AND THE ONLY PARTS SHE DIDN'T GRANT SUMMARY JUDGEMENT ON WAS ON  
25 THE CONDITION THAT THERE'S ACTUALLY EVIDENCE OF IT.

1           AND THE WAY TO ANSWER THAT QUESTION, IS THERE EVIDENCE OF  
2           IT, IS PRECISELY THIS, IT DOES [REDACTED] CORRESPOND TO  
3           THESE THINGS.

4           AND IF IT BECOMES A TRIAL OBJECTION, WE SIMPLY REWARDED  
5           THEM AS NOW THEY GET PAST SUMMARY JUDGEMENT, PRECISELY BECAUSE  
6           OF THIS SORT OF SHIFTING TARGET. WHEN THE TIME CAME TO SUMMARY  
7           JUDGEMENT, THEY DIDN'T HAVE THE EVIDENCE. AND THAT WAS THE  
8           ISSUE THAT JUDGE FREEMAN SORT OF IDENTIFIED TO YOU.

9           THAT'S KIND OF THE SUBSTANTIVE ANSWER, YOUR HONOR. THE  
10          PROCEDURAL ANSWER IS, WE VERY MUCH OBJECT TO THIS NOTION OF  
11          REPEATED SERIAL AMENDMENTS OF 6,000 PAGES EACH. WE HAVE  
12          18,000 PAGES. AND IT'S NOT AN EXAGGERATION, THE ACTUAL NUMBER  
13          OF REPORTS ON TECHNICAL MATTERS FROM FINJAN. PARTIES AREN'T  
14          ALLOWED TO SIMPLY AMEND JUST TO AMEND AND TO PUT OFF AN ISSUE  
15          FOR ANOTHER DAY AT TRIAL. THE THRESHOLD QUESTION HAS TO BE,  
16          WILL I LET A PARTY CHANGE THE RECORD? AND THEY HAVE TO MAKE A  
17          SHOWING.

18          THE FACT THAT THERE'S SOMETHING IN THE INFRINGEMENT  
19          CONTENTIONS IS NOT, BY ITSELF, GOOD ENOUGH TO LET YOU MAKE AN  
20          AMENDMENT, ANYMORE THAN IF WE LEFT OUT AN INVALIDITY  
21          CONTENTION, WE REALLY WISH WE WOULD HAVE MADE NOW BECAUSE WE  
22          GOT TO THIS POINT IN THE CASE. SINCE I HAD IT BACK IN MY  
23          INVALIDITY KNOW CONTENTIONS, I CAN NOW GO AHEAD AND POP IT INTO  
24          MY EXPERT REPORT.

25          THE PROCESS JUST DOESN'T WORK THAT WAY. THEY HAVE TO HAVE

1 A --

2 THE COURT: BUT THEY'RE -- AND LET ME JUST ARGUE THE  
3 POINT WITH YOU THAT THEY ARE NOT POPPING IN A NEW THEORY, THEY  
4 ARE INSERTING THE WORDS THAT ARE THERE.

5 THEY ARE SAYING THESE WORDS, VIRTUAL ENVIRONMENT AGENT,  
6 WHICH ARE NOW IN OUR EXPERT REPORT AT PARAGRAPH, WHATEVER IT  
7 IS, 4,000 SOMETHING, THIS PHRASE MEANS THAT THE MPC IS IN THE  
8 SANDBOX.

9 MR. GAUDET: RIGHT.

10 THE COURT: AND AS A COMPONENT OF THAT, IT WOULD BE  
11 FINJAN'S BURDEN TO DEMONSTRATE THAT, RIGHT. THAT THAT'S WHAT  
12 THOSE WORDS MEAN.

13 SO AGAIN, IT'S A TRIAL OBJECTION STAGE. I MEAN, YOU HAVE  
14 THAT ARGUMENT, THAT THAT'S NOT WHAT IT MEANS, AND YOU CAN'T  
15 JUST TAKE ANY WORD IN THE REPORT AND ASSIGN SOME  
16 UNSUBSTANTIATED MEANING.

17 ISN'T THAT REALLY YOUR ARGUMENT?

18 MR. GAUDET: YOUR HONOR, NOT EXACTLY, YOUR HONOR.

19 THAT'S THAT THIS WOULD BE A NEW THEORY, JUST AS IN MY  
20 ANALOGIES TO THE INVALIDITY CONTENTION. IN SO FAR AS RIGHT  
21 NOW, THEY SHOULD BE STUCK WITHOUT THIS THEORY AT ALL BECAUSE  
22 THERE'S NOTHING IN THE ORIGINAL REPORT, THAT WAS WITHIN THE  
23 SCOPE OF THE INFRINGEMENT CONTENTIONS.

24 AND SO THEY SHOULD NOT BE ABLE TO PULL IN, IF WE ARE RIGHT  
25 ABOUT THAT. IN OTHER WORDS, IF WE ARE RIGHT, THAT THERE'S



1 NOTHING IN THE OPENING REPORT, THAT SHOULD HAVE BEEN ABLE TO  
2 PUT THIS THEORY IN.

3 SO WE STRIKE OUT [REDACTED] WE STRIKE OUT THE OTHER  
4 THINGS, THEN THEIR THEORY IS, WE WOULD NOW GET TO PULL WHATEVER  
5 WE WANTED TO IN, TO TRY -- IN OTHER WORDS, EITHER A, IT DOESN'T  
6 MATCH UP TO THAT, IN WHICH CASE THEY CANNOT MAKE AN AMENDMENT  
7 AT ALL. THE STANDARD FOR THE AMENDMENT IS THEY SHOULD BE THE  
8 ONES TO MOVE. THE STANDARD OF THE AMENDMENT HAS TO BE, THIS  
9 THING WE PUT YOU ON NOTICE OF IN THE ORIGINAL REPORT, IT  
10 CORRESPONDS TO THIS FUNCTIONALITY.

11 SO WE UNDERSTAND TAKE THE CODE NAME OUT, BUT GIVE US THAT  
12 FUNCTIONALITY. THAT'S THE STEP THEY HAVE TO MEET. AND THAT'S  
13 THE STEP THEY ARE TRYING TO JUMP OVER.

14 THEY ARE TRYING TO SAY, LET US AMEND, WHETHER OR NOT  
15 REGARDLESS OF WHETHER OR NOT OUR AMENDMENT CORRESPONDS TO THE  
16 FUNCTIONALITY DISCLOSED IN OUR ORIGINAL REPORT. AND THAT WOULD  
17 BE LIKE ME SAYING, LET ME JUST AMEND AND ADD A NEW INVALIDITY  
18 CONTENTION RIGHT NOW, WHETHER OR NOT I SHOW YOU IT WAS ALWAYS  
19 IN MY OPENING REPORT.

20 AND SO THAT'S WHY THIS HAS TO BE DONE NOW AND NOT AT  
21 TRIAL. WE ARE ASKING THE THRESHOLD QUESTION OF, PARTIES CAN'T  
22 JUST AMEND TO AMEND, THEY CAN ONLY AMEND IF THERE IS SOMETHING  
23 IN THE ORIGINAL REPORT, RIGHT, THAT CORRESPONDS TO THE  
24 AMENDMENT.

25 AND HERE IT WAS, SHOW ME THE FUNCTIONALITY THAT

1 CORRESPONDS TO THAT ITEM. AND THAT WAS EXACTLY WHAT I WALKED  
2 YOU THROUGH ON [REDACTED] THEY CAN'T JUST KICK THE CAN.

3 THE COURT: OKAY. ALL RIGHT.

4 WHY DON'T YOU, JUST FOR THE COMPLETENESS OF YOUR RECORD,  
5 IF YOU WOULD POINT TO THE LANGUAGE, OR IF YOU WANT TO ADDRESS  
6 THE LANGUAGE, THE SUBSTITUTION WITH REGARDS TO [REDACTED]  
7 [REDACTED] AND THEN LET ME HEAR FROM FINJAN, AND I WILL BE BACK  
8 TO YOU, IT'S YOUR MOTION AND YOU WILL GET THE LAST WORD.

9 MR. GAUDET: THANK YOU, YOUR HONOR.

10 IF WE NOW GO BACK TO THAT SAME PAGE 35, YOUR HONOR.

11 THE COURT: UH-HUH.

12 MR. GAUDET: AND YOU SEE NINE LINES DOWN, THERE'S A  
13 LINE THAT BEGINS WITH THE WORD "DETERMINE."

14 THE COURT: TELL ME WHICH PARAGRAPH YOU ARE IN?

15 MR. GAUDET: I'M SORRY, YOUR HONOR. THE SECOND  
16 PARAGRAPH, NINE LINES DOWN.

17 THE COURT: GOT IT. "DETERMINE WHETHER."

18 MR. GAUDET: RIGHT.

19 THE FIRST FULL SENTENCE THERE SAYS, IF THE CODE IS  
20 COMPUTABLE, CISCO AMP FOR NETWORKS PACKAGES INFORMATION  
21 PERTAINING TO THE EXECUTABLE AND INFORMATION PERTAINING TO  
22 TASKS AND RELEVANT PARAMETERS AND TRANSMITS IT TO THREATGRID  
23 AND/OR TALOS FOR FURTHER ANALYSIS.

24 SO WHATEVER WE ARE TALKING ABOUT IN THIS SENTENCE IS  
25 TRANSMITTED.

1 THE SENTENCE SAYS, AT THE CODE AND INFORMATION PERTAINING  
2 TO THE TASK AND PARAMETERS RELEVANT TO THREATGRID, AND/OR TALOS  
3 IN THE MOBILE PROTECTION CODE.

4 AND THE NEXT SENTENCE, SAYS, "THIS INFORMATION INCLUDES,"  
5 AND AFTER THE PARENTHETICAL, WE FIND THE PHRASE THEY ARE  
6 RELYING ON, "PARAMETERS TO RUN THE SAMPLE FILE FOR URL."

7 THAT IS DISCLOSED AS SOMETHING THAT IS TRANSMITTED.  
8 THAT'S POINT NUMBER ONE. IT'S NOT A COMPONENT.

9 POINT NUMBER TWO, YOUR HONOR, IS THAT THESE TWO THINGS  
10 WERE THE SUBJECT OF A MOTION TO AMEND.

11 THE COURT: WHEN DID YOU DO THESE THINGS?

12 MR. GAUDET: [REDACTED] THEY'RE AT  
13 PAGE 46 AND PAGE 47 OF THE MOTION TO AMEND THAT FINJAN LOST.  
14 AND THAT'S -- SORRY, PAGE 46 AND PAGE 47 OF THE PROPOSED  
15 SUPPLEMENT, WHICH IS OUR EXHIBIT 4 THAT WE TALKED ABOUT  
16 EARLIER.

17 THEY TRIED TO GET THESE THINGS INTO THE CASE AND IT WAS  
18 DENIED. AND LIKEWISE, YOUR HONOR, IF THOSE PAGES DON'T EVEN  
19 INCLUDE [REDACTED] IF THEY TRIED TO GET [REDACTED] IN,  
20 THAT UNQUESTIONABLY WOULD HAVE BEEN DENIED.

21 AND SO IT KIND OF COMES BACK TO THE SAME POINT THAT WE  
22 CAN'T REWARD PARTIES BY KICKING OFF AFTER SUMMARY JUDGEMENT AND  
23 INTO A JURY ISSUE, FOR NOT MAKING THE BASIC DISCLOSURES THAT  
24 HAVE TO FORM THE CASE, THAT THE INFRINGEMENT CONTENTIONS, THEN  
25 YOU DO YOUR REPORTS, IF SOMETHING IS BEYOND THE SCOPE OF THE

1 CONTENTIONS, WE CLEAN THAT UP BEFORE TRIAL.

2 SO THE LAST POINT, YOUR HONOR, I WANTED TO MAKE WAS WITH  
3 RESPECT TO, THEY MAKE A POINT ABOUT THREATGRID ONLY CHART, THAT  
4 THERE'S A THREATGRID ONLY CHART. AND THAT'S OUR EXHIBIT 2,  
5 WHICH IS THEIR EXHIBIT 6.

6 AND IT'S INTERESTING, YOU WOULD THINK IF THERE WAS TRULY  
7 THREATGRID, THEN WE WOULD HAVE TALKED A LOT ABOUT IT. BUT THEY  
8 DIDN'T EVEN MENTION THIS IN THE MEET AND CONFER.

9 AND THE REASON IS WHEN YOU LOOK ON THE FIRST PAGE OF THE  
10 CHART ITSELF, IT DEFINES THREATGRID AS INCLUDING ALL THE AMP  
11 APPLIANCES. AND THEN AS YOU MOVE -- IN OTHER WORDS, ALL THE  
12 GATEWAYS. AND THEN IF YOU MOVE TO THE CHART ITSELF, IT'S  
13 NOTHING BUT A CUT AND PASTE. AND IT ACTUALLY BECOMES ALMOST  
14 NONSENSICAL IN PLACES, THREATGRID SENDS IT THREATGRID, RIGHT.

15 BUT THE OTHER POINT, AND THIS WILL BE MY FINAL POINT,  
16 YOUR HONOR, THEY SAID THAT THERE ARE EXAMPLES IN THIS CHART  
17 THAT SHOW, YOU KNOW, MOBILE PROTECTION CODE NOT BEING  
18 TRANSMITTED AT ALL.

19 AND THEY POINTED YOU TO THE PAGE 38, BOTTOM OF PAGE 38,  
20 WHICH HAS THE PHRASE, "CISCO THREATGRID TRANSMITS UNKNOWN  
21 FILES, CISCO'S CLOUD PRODUCTS." IT GOES ON TO THE NEXT PAGE.

22 THIS WAS THE NOTICE, THIS WAS THEIR NOTICE TO US THAT WE  
23 WERE ACCUSING THINGS WHERE THE MOBILE PROTECTION CODE IS NEVER  
24 TRANSMITTED.

25 I FOUND THAT CURIOUS, SO I WENT BACK, BECAUSE THIS KIND OF

1 PICKS UP IN THE MIDDLE OF A DISCUSSION, JUST GO BACK ONE PAGE  
2 BEFORE TO PAGE 37, THE LAST LINE ON PAGE 37, "AS SHOWN BELOW,  
3 CISCO'S THREATGRID," REMEMBER THAT'S DEFINED TO INCLUDE ALL THE  
4 GATEWAYS, "TRANSMITS MOBILE PROTECTION CODE TO A NUMBER OF  
5 SANDBOXES FOR ANALYSIS, BASED UPON THE DETERMINATION," AND IT  
6 GOES ON.

7 THE NEXT PARAGRAPH, "CISCO'S THREATGRID INCLUDES A VIRTUAL  
8 MACHINE ENVIRONMENT KNOWN AS GLOVEBOX. CISCO THREATGRID  
9 INCLUDES A NETWORK INTERFACE AND TRANSMITTER SOFTWARE WHICH  
10 TRANSMITS MOBILE PROTECTION CODE." THEN, THE PARAGRAPH THEY  
11 TALK ABOUT, ARE HOW IN ADDITION, IT TRANSMITS THE FILE.

12 THIS IS WHAT WE ARE DEALING WITH, YOUR HONOR. THESE  
13 DISCLOSURES COULD NOT BE ANY CLEARER THAT MOBILE PROTECTION  
14 CODE IS ALWAYS TRANSMITTED. AND YET, BY WAY OF -- I MEAN,  
15 AFTER LOSING MOTIONS TO AMEND, LOSING A MOTION TO STRIKE, WE  
16 ARE GOING TO -- THEY ARE GOING TO GET OVER SUMMARY JUDGEMENT  
17 AND POTENTIALLY HAVE THIS THOUSANDS OF PAGES PLAY OUT IN FRONT  
18 OF THE JURY OVER SOMETHING THAT CLEARLY WAS NEVER DISCLOSED AND  
19 SHOULD BE STRUCK FROM THE ORIGINAL REPORT AND SHOULD NOT BE  
20 PERMITTED IN ANY ADMITTED REPORTS.

21 AND YOUR HONOR, THAT'S ALL THAT I HAVE.

22 THE COURT: THANK YOU, MR. GAUDET. I APPRECIATE IT.

23 ALL RIGHT. MR. KAZI?

24 MR. KAZI: YES. GOOD MORNING, YOUR HONOR.

25 THIS IS AAMIR KAZI ON BEHALF OF PLAINTIFF FINJAN.

1 THE COURT: GOOD MORNING.

2 MR. KAZI: I WOULD LIKE TO START JUST BY FRAMING OUR  
3 ISSUES, WHICH IS EXACTLY HOW YOU FRAMED IT AT THE BEGINNING OF  
4 YOUR DISCUSSION, YOUR HONOR.

5 AND SO WE AGREE THAT THE QUESTION THAT IS LIVE HERE IS  
6 WHETHER THERE IS A SINGLE THEORY IN FINJAN'S CONTENTIONS THAT  
7 RELATES TO WHETHER MOBILE PROTECTION CODE CAN BE READ IN THE  
8 SANDBOX RATHER THAN HAVING TO BE TRANSMITTED TO THE SANDBOX.

9 AND WE AGREE WITH THE COMMENTS YOU MADE, WHICH IS THAT THE  
10 CONTENTIONS ARE TO SERVE AS A GUIDE FOR EXPERT REPORTS AND THAT  
11 THE LANGUAGE IN THE CONTENTIONS IS CONSISTENT WITH THE LANGUAGE  
12 IN THE REPORTS. AND FROM OUR PERSPECTIVE, WE AGREE THAT THE  
13 INQUIRY SHOULD END THERE.

14 SO FINJAN'S COUNSEL HAD SOME ADDITIONAL ARGUMENT, AND I  
15 WILL ADDRESS THAT, BUT FROM OUR PERSPECTIVE, THE INQUIRY ENDS  
16 THERE. THE CONTENTIONS SUPPORT WHAT IS IN THE REPORT AND  
17 THAT'S THE CHARGE THAT WE ARE TASKED WITH HERE TODAY.

18 SO BEFORE I GET INTO RESPONDING TO SOME OF THE SUBSTANCE  
19 OF MR. GAUDET'S ARGUMENT, LET ME TOUCH A LITTLE BIT UPON SOME  
20 OF THE PROCEDURAL ISSUES.

21 SO I THINK MR. GAUDET COMMENTED THAT THESE REPORTS THAT  
22 FINJAN HAS SERVED ARE, THAT THE COURT HAD NOT ALLOWED OR HAS  
23 NOT ALLOWED THESE REPORTS. AND WE JUST VIEW THE COURT'S ORDERS  
24 A LITTLE BIT DIFFERENTLY THAN CISCO.

25 SO I THINK I WOULD POINT YOU TO DOCKET NUMBER 397 WHICH IS

1 THE ORDER ON THE MOTION TO STRIKE. AND IN THAT PARTICULAR  
2 ORDER, ON PAGE 6 OF THE ORDER, THE COURT VERY SPECIFICALLY  
3 SAYS, "FINJAN'S EXPERTS," AND I'M READING FROM PAGE 6, AT LINES  
4 6 THROUGH 8. "FINJAN'S EXPERTS ARE DIRECTED TO REDRAFT THEIR  
5 REPORTS TO REMOVE THE DISALLOWED TERMINOLOGY AND ADHERE THEIR  
6 OPINIONS OF DISCLOSURES IN FINJAN'S OPERATIVE INFRINGEMENT  
7 CONTENTIONS." THAT IS A VERY DIRECT INSTRUCTION FROM THE  
8 COURT.

9 THERE'S A SIMILAR STATEMENT IN THE SUMMARY JUDGEMENT ORDER  
10 DOCKET 47 AT PAGE 4.

11 SO --

12 THE COURT: I'M SORRY, DOCKET WHAT? I'M SORRY,  
13 MR. KAZI, COULD YOU SLOW DOWN JUST A LITTLE BIT, ESPECIALLY  
14 WHEN YOU ARE READING.

15 MR. KAZI: YES, YOUR HONOR.

16 THE COURT: AND YOU REFERRED TO THE SUMMARY JUDGEMENT  
17 ORDER?

18 MR. KAZI: YES, YOUR HONOR.

19 SO THERE'S A SIMILAR STATEMENT IN THE SUMMARY JUDGEMENT  
20 ORDER, WHICH IS DOCKET 487. AND I WAS LOOKING AT PAGE 4.

21 AND THE OTHER TWO EXAMPLES, I HAVE SEEN OTHER STATEMENTS  
22 IN THE HEARING TRANSCRIPTS THAT ARE FROM THE COURT THAT ARE OF  
23 A SIMILAR MESSAGE.

24 BUT THE POINT IS, THE JUDGE VERY CLEARLY ASKED US,  
25 DIRECTED US TO REDRAFT THE REPORTS, AND THAT'S WHAT FINJAN HAS

1 DONE.

2 SO I WANTED TO RESPOND ON THE PROCEDURAL SIDE OF THINGS  
3 BEFORE I TOUCH UPON THE SUBSTANCE. IF IT'S OKAY, I WILL MOVE  
4 ON TO SOME OF THE ARGUMENT MR. GAUDET HAD ABOUT THE SPECIFIC  
5 [REDACTED] ISSUE.

6 THE COURT: SO LET ME BE SURE I'M UNDERSTANDING WHERE  
7 FINJAN IS WITH REGARDS TO AMENDING ITS REPORTS. AND I  
8 APPRECIATE YOUR POSITION IS, WE HAD LEAVE AND WE WERE DIRECTED  
9 TO DO THAT BY THE COURT, AND SO WE HAVE SUBSTITUTED OUT THESE  
10 TERMS TO MAKE IT VERY CLEAR THAT OUR REPORT AND OUR CONTENTIONS  
11 ARE CONSISTENT. WE HAVE TAKEN WORDS FROM THE CONTENTIONS AND  
12 WE HAVE PUT THOSE IN THE REPORT.

13 AM I UNDERSTANDING THAT OPERATION?

14 MR. KAZI: JUST MAYBE JUST TO CLARIFY SLIGHTLY.

15 I THINK THE WORDS FROM THE CONTENTIONS WERE ALREADY IN THE  
16 REPORT. I THINK WHAT WE DID WAS WE REMOVED THE SPECIFIC NAMES  
17 THAT CISCO OBJECTED TO AND WE ARE RELYING UPON NOT THE SPECIFIC  
18 NAMES, BUT THE THEORIES RELATING TO THOSE FEATURES THAT WERE  
19 DISCLOSED IN THE ORIGINAL CONTENTIONS.

20 THE COURT: ALL RIGHT.

21 SO WHAT IS IN THE REPORT? SO YOU APPROACH YOUR WITNESS AT  
22 TRIAL, DR. MEDVIDOVIC IS ON THE STAND, YOU WANT TO ELICIT FROM  
23 HIM AN OPINION AS TO, LET'S SAY, THREATGRID INFRINGES BECAUSE  
24 THE MPC IS RESIDENT IN THE SANDBOX, AND YOU START DOWN THAT  
25 LINE OF QUESTIONING, YOU GET AN OBJECTION THAT THAT IS ASKING



1 FOR AN OPINION THAT'S NOT DISCLOSED IN THE REPORT.

2 YOU GO TO JUDGE FREEMAN, YOU HAVE A SIDEBAR, THE BURDEN IS  
3 ON YOU TO DEMONSTRATE THAT THAT THEORY IS DISCLOSED IN THE  
4 REPORT. WHERE DO YOU GO?

5 MR. KAZI: ALL RIGHT.

6 SO WHAT I WOULD ASK -- WHAT I WOULD POINT TO IS A  
7 PARAGRAPH IN THE REPORT THAT IS ALSO VERY SIMILAR TO ONE THAT'S  
8 IN THE INFRINGEMENT CONTENTIONS.

9 SO I WOULD START, IF YOU HAVE EXHIBIT 2 TO THE FINJAN  
10 OPPOSITION, WHICH IS A REDLINE OF DR. MEDVIDOVIC'S REPORT AS  
11 COMPARED TO A PREVIOUSLY STRICKEN REPORT.

12 I'M GOING TO PULL THAT DOCUMENT UP HERE MYSELF, BARE WITH  
13 ME ONE SECOND.

14 THE COURT: AND WHAT'S THE DATE -- SO THE REPORT,  
15 ORIGINAL REPORT IS IN JULY, THE SECOND AMENDED IS IN MARCH, IS  
16 THIS A REDLINE OF THE SECOND AMENDED?

17 MR. KAZI: THAT'S RIGHT, YOUR HONOR.

18 THIS IS A REDLINE OF THE SECOND AMENDED REPORT AS COMPARED  
19 TO THE PRIOR REPORT.

20 SO IF YOU HAVE THAT REPORT IN FRONT OF YOU, I WOULD TAKE  
21 AS AN EXAMPLE PARAGRAPH 4018. AND SO THAT IS ON PAGE 2567.

22 THE COURT: 2567. OKAY. LET ME GET THAT.

23 MR. KAZI: YEAH. NOW IF YOU HAVE --

24 THE COURT: HANG ON, HANG ON. AND I'M SORRY, WHAT  
25 WAS THE PARAGRAPH NUMBER?

1 MR. KAZI: 4318.

2 THE COURT: ALL RIGHT. I'M THERE.

3 MR. KAZI: SO IF YOU ARE AT PARAGRAPH 4318 AND 4319,  
4 THE LANGUAGE IN THOSE TWO PARAGRAPHS ARE VERY SIMILAR, IN FACT  
5 I WOULD SAY ALMOST IDENTICAL TO THE LANGUAGE IN THE OPERATIVE  
6 INFRINGEMENT CONTENTIONS WHICH WERE EXHIBIT 1 TO -- EXCUSE  
7 ME -- CISCO'S MOTION.

8 SO I THINK -- YEAH. I THINK YOU ARE PROBABLY FAMILIAR  
9 WITH THE LANGUAGE. I THINK WHAT I WOULD POINT YOU TO AS AN  
10 EXAMPLE IS THE FIRST SENTENCE, PARAGRAPH 4319 WHERE IT SAYS,  
11 "CISCO THREATGRID MEETS THE RECITED CLAIM LANGUAGE BECAUSE  
12 CISCO THREATGRID CAUSES A VIRTUAL ENVIRONMENT AGENT (E.G.  
13 MOBILE PROTECTION CODE) TO BE EXECUTED WITHIN THE VIRTUAL  
14 ENVIRONMENT RUNNING WINDOWS OPERATING SYSTEM." AND IT GOES ON  
15 FROM THERE.

16 AND SO THAT LANGUAGE IS VERY CLEARLY TYING THIS VIRTUAL  
17 ENVIRONMENT AGENT TO THE CLAIMED MOBILE PROTECTION CODE.  
18 THERE'S A PARENTHESSES THAT FOLLOWS RIGHT AFTERWARDS. AND I  
19 SHOULD HAVE POINTED YOU TO ACTUALLY, IF YOU FLIP BACK UP A  
20 COUPLE OF PAGES TO 2566, ALL OF THIS DISCUSSION IS IN THE  
21 CONTEXT OF ELEMENT 14(B) OF THE '633 PATENT.

22 THE COURT: RIGHT.

23 SO AGAIN, TO MY POINT, YOU ARE AT YOUR -- YOU HAVE A TRIAL  
24 OBJECTION, YOU HAVE YOUR SIDEBAR WITH JUDGE FREEMAN, AND THE  
25 MPC BEING RESIDENT IN THE SANDBOX, AND SHE TURNS TO YOU AND

1 SAYS, WELL, IS THAT IN THE REPORT, YES OR NO? AND YOU TURN TO  
2 THIS PARAGRAPH, 4319.

3 MR. KAZI: WELL -- YES, YOUR HONOR.

4 THE COURT: IS THAT RIGHT?

5 MR. KAZI: I WOULD POINT TO THIS PARAGRAPH AS AN  
6 EXAMPLE.

7 I UNDERSTAND CISCO'S POSITION IN ITS MOTION AND IN ITS  
8 REPLY WAS THAT FINJAN HAD NOT SET FORTH, IN THIS LANGUAGE --  
9 WELL, SO LET ME BACK UP A STEP.

10 THE LANGUAGE IN THE PARAGRAPH 4319 IS SIMILAR TO WHAT  
11 IS -- IT'S ALMOST IDENTICAL TO WHAT IS IN THE INFRINGEMENT  
12 CONTENTIONS. AND I UNDERSTAND CISCO'S POSITION WAS THAT, WELL,  
13 FINJAN DOESN'T SAY IN THE LANGUAGE IN THE INFRINGEMENT  
14 CONTENTIONS THAT THE VIRTUAL ENVIRONMENT AGENT IS SOMETHING  
15 THAT WAS ALREADY RESIDENT ON THE VIRTUAL MACHINE OR ON THE --  
16 IN THE SANDBOX.

17 AND I THINK THAT POSITION, AS I UNDERSTAND IT, YOU KNOW,  
18 FINJAN WOULD NOT HAVE HAD ANY REASON TO SAY THAT. THE CLAIM  
19 DOES NOT HAVE A LIMITATION REQUIRING THAT THE MOBILE PROTECTION  
20 CODE IS NOT TRANSMITTED. IF THERE WAS SUCH A LIMITATION, WOULD  
21 IT WOULD BE FAIR FOR FINJAN TO SET FORTH ITS THEORY AS TO WHY  
22 THE MOBILE PROTECTION CODE WAS NOT TRANSMITTED. BUT FINJAN  
23 NEVER STATES IN ITS INFRINGEMENT CONTENTIONS THAT THE VIRTUAL  
24 ENVIRONMENT AGENT IS TRANSMITTED.

25 AND I THINK IT'S A FAIR READ OF THAT LANGUAGE IF FINJAN IS

1 NOT SETTING FORTH THAT THE VIRTUAL ENVIRONMENT AGENT IS  
2 TRANSMITTED, THAT THERE'S NO DISCLOSURE OF IT BEING  
3 TRANSMITTED. I THINK IT'S UNFAIR TO READ INTO THIS LANGUAGE  
4 THAT THE VIRTUAL ENVIRONMENT AGENT IS TRANSMITTED.

5 AND CISCO IS DOING THAT JUST BY VIRTUE OF FINJAN'S FAILURE  
6 TO SAY, OR FINJAN NOT SAYING THAT IT WAS TRANSMITTED.

7 THE COURT: WELL, IT'S FINJAN'S, OBVIOUSLY,  
8 OBLIGATION TO DISCLOSE ITS THEORIES OF INFRINGEMENT. THAT  
9 STARTS WITH THE CONTENTIONS, THAT'S WHY WE ARE HERE TODAY. BUT  
10 AT TRIAL, THE QUESTION WILL BE, IS THAT OPINION DISCLOSED IN  
11 THE REPORT?

12 AND, YOU KNOW, IF IT MOVES ON TO THE TRIAL PHASE, DOES  
13 THIS LANGUAGE SURVIVE, IT MOVES TO THE TRIAL PHASE, WHAT I WANT  
14 TO KNOW IS WHAT ARE YOU POINTING AT IN RESPONSE TO CISCO'S  
15 OBJECTION? I'M JUST TRYING TO SHIFT THE CONTEXT.

16 YOU WON'T BE POINTING TO THE CONTENTION, YOU WILL BE WITH  
17 HER HONOR AT A SIDEBAR. YOU WILL HAVE YOUR 4,000 PAGE REPORT  
18 OR 2,500 PAGE REPORT HIGHLIGHTED AND TABBED, ET CETERA. BUT  
19 YOU ARE IN A -- AND THIS IS WHERE YOU GO, IS THE ANSWER TO MY  
20 QUESTION. THIS WAS WHAT I HEAR YOU SAYING IS YOU WOULD GO, FOR  
21 EXAMPLE, TO PARAGRAPH 4319 AND SAY, THIS LANGUAGE IS  
22 SUFFICIENT.

23 MR. KAZI: YES, YOUR HONOR.

24 SO IF THE QUESTION WAS POSED, WHERE IN FINJAN'S EXPERT  
25 REPORT IS THERE DISCLOSURE OF A VIRTUAL ENVIRONMENT AGENT THAT

1 IS RESIDENT AT THE SANDBOX? IF THAT WAS THE QUESTION, I THINK  
2 WE WOULD GO TO THIS PARTICULAR PARAGRAPH.

3 CERTAINLY THERE ARE OTHER ASPECTS OF THE VIRTUAL  
4 ENVIRONMENT AGENT THAT ARE DISCLOSED AT OTHER PARTS OF THE  
5 REPORT, BUT THAT IS ONE PLACE THAT WE WOULD POINT TO.

6 YOU KNOW, IT'S LIKE KIND OF PROVING A NEGATIVE HERE. THE  
7 TRANSMISSION OR ABSENCE OF THE TRANSMISSION IS NOT A  
8 LIMITATION, AND IT WOULDN'T BE FEASIBLE FOR FINJAN TO  
9 ANTICIPATE EVERY NEGATIVE THAT CISCO WOULD THINK TO APPLY AND  
10 INCLUDE IT IN ITS CONTENTIONS, OR FOR THAT MATTER, IN ITS  
11 REPORT.

12 THE COURT: ALL RIGHT. I TOOK YOU A LITTLE BIT OFF  
13 TRACK.

14 MR. KAZI: OKAY. NO PROBLEM.

15 SO WHAT I WANTED TO DO WAS TALK A LITTLE BIT ABOUT THE  
16 SUBSTANCE AND RESPOND A LITTLE BIT ABOUT TO WHAT MR. GAUDET'S  
17 ARGUMENT ABOUT THE SPECIFIC [REDACTED] ISSUE.

18 AND I THINK WE TOUCHED UPON THIS JUST NOW BECAUSE THE  
19 FIRST PART OF MR. GAUDET'S ARGUMENT WAS WHETHER OR NOT FINJAN'S  
20 INFRINGEMENT CONTENTIONS DISCLOSE A MOBILE PROTECTION CODE THAT  
21 IS RESIDENT AT THE SANDBOX.

22 AND SO THE LANGUAGE THAT I POINTED YOU TO IN  
23 PARAGRAPH 4318 IS ALSO THE LANGUAGE ON PAGE 35 OF FINJAN'S  
24 INFRINGEMENT CONTENTIONS WHICH WERE ATTACHED AS EXHIBIT CONE TO  
25 CISCO'S MOTION.

1           AND SO I THINK WE ARE ALL FAMILIAR WITH THAT LANGUAGE, WE  
2           HAVE LOOKED AT IT AND TALKED ABOUT IT A LITTLE BIT TODAY AND  
3           CONSIDERABLY THROUGHOUT THE BRIEFING.

4           AND AS I UNDERSTAND CISCO'S POSITION NOW, IT SEEMS TO HAVE  
5           SHIFTED A LITTLE BIT TO -- I DIDN'T, LET ME PUT IT THIS WAY, I  
6           DIDN'T HEAR REFERENCE TO THAT PARTICULAR SENTENCE THAT WE JUST  
7           READ IN MR. GAUDET'S ARGUMENT.

8           SO I DON'T KNOW IF CISCO'S POSITION IS STILL THE FIRST  
9           SENTENCE THAT REFERS TO THE VIRTUAL ENVIRONMENTAL AGENT DOESN'T  
10          DISCLOSE THE PRESENCE OF MOBILE PROTECTION CODE AT THE SANDBOX.  
11          BUT IF I UNDERSTAND WHAT MR. GAUDET WAS SAYING, BY VIRTUE OF  
12          THAT LIMITED DISCLOSURE, CISCO WOULD HAVE NO WAY TO KNOW THAT  
13          FINJAN IS POINTING TO [REDACTED]

14          AND SO THAT'S THE ARGUMENT THAT I WANT TO TOUCH UPON HERE  
15          A LITTLE BIT.

16          SO I THINK THE FIRST RESPONSE -- I THINK THE FIRST  
17          RESPONSE TO CISCO'S ARGUMENT HERE IS THAT IF CISCO WAS  
18          UNCERTAIN AS TO WHAT CONSTITUTED THE VIRTUAL ENVIRONMENT AGENT,  
19          CISCO SHOULD HAVE RAISED THAT ISSUE WITH THE COURT EARLIER.

20          CISCO CAN'T JUST BURY ITS HEAD IN THE SAND, AND THAT'S A  
21          QUOTE FROM A PRIOR ORDER ON THIS ISSUE IN A RELATED FINJAN CASE  
22          THAT WAS IN FRONT OF JUDGE FREEMAN. I CAN GIVE YOU THE FULL  
23          CITATION THAT'S --

24                 THE COURT: I DON'T THINK THAT'S NECESSARY. I DON'T  
25                 THINK THAT'S NECESSARY.

1 MR. KAZI: OKAY. SURE.

2 SO IF CISCO HAD AN ISSUE UNDERSTANDING FINJAN'S  
3 INFRINGEMENT CONTENTIONS, I THINK THE APPROPRIATE RECOURSE FOR  
4 IT WAS TO RAISE THAT ISSUE WITH THE COURT AT APPROPRIATE TIME.  
5 CISCO DID FILE A MOTION TO COMPEL INFRINGEMENT CONTENTIONS IN  
6 THIS CASE, JUST NOT ON THE '633 PATENT.

7 AND I THINK THIS CASE IS ACTUALLY EVEN WORSE BECAUSE  
8 FINJAN TRIED TO ADD MORE INFORMATION ABOUT THE ACCUSED PRODUCTS  
9 TO THE CONTENTIONS AND CISCO OPPOSED THAT MOTION.

10 SO AS A MATTER OF FAIRNESS, CISCO CAN'T COME BACK NOW AND  
11 CLAIM THAT FINJAN DID NOT PROVIDE ENOUGH INFORMATION WHEN  
12 FINJAN WAS WILLING TO DO SO AND CISCO OPPOSED. SO THAT'S THE  
13 FIRST POINT.

14 THE SECOND POINT HERE IS OUR POSITION IS THAT THE  
15 CONTENTIONS DID PROVIDE SUFFICIENT CONTEXT FOR CISCO TO  
16 UNDERSTAND THAT THE ALLEGATIONS WERE DIRECTED TO THE [REDACTED]

17 [REDACTED]  
18 SO WE'VE TALKED A LOT ABOUT THE EXCERPT ON PAGE 35. BUT  
19 IF YOU LOOK THROUGHOUT THE CONTENTIONS, THIS CONCEPT OF A  
20 VIRTUAL ENVIRONMENT, VIRTUAL ENVIRONMENT AGENT IS THROUGHOUT  
21 THE INFRINGEMENT CONTENTIONS.

22 SO I WILL POINT YOU TO, AS AN EXAMPLE, IF WE TURN TO  
23 PAGE 5 OF THE SAME EXHIBIT 1 THAT WE HAVE BEEN LOOKING AT, LET  
24 ME KNOW WHEN YOU ARE THERE, YOUR HONOR, AND I CAN POINT YOU TO  
25 THE RELEVANT PASSAGE.

1 THE COURT: WHICH EXHIBIT, MR. KAZI?

2 MR. KAZI: EXHIBIT 1 TO CISCO'S MOTION, WHICH IS THE  
3 INFRINGEMENT CONTENTIONS.

4 THE COURT: OH, I'VE GOT IT.

5 MR. KAZI: IF YOU TURN TO PAGE 5, THE DISCUSSION AT  
6 PAGE 5 CONCERNS A DIFFERENT CLAIM. IT CONCERNS CLAIM 1.

7 BUT HERE, THROUGHOUT THE CONTENTIONS, FINJAN PROVIDES  
8 EXPLANATIONS OR CONTEXT AS TO WHAT IT BELIEVES IS THE VIRTUAL  
9 ENVIRONMENT AGENT.

10 SO FOR EXAMPLE, AT THE BOTTOM OF PAGE 5 IN ROW 1-B, THE  
11 SECOND PARAGRAPH, THERE'S A SENTENCE THAT SAYS, "CISCO AMP FOR  
12 NETWORKS MEETS THE RECITED CLAIM LANGUAGE, BECAUSE CISCO AMP  
13 FOR NETWORKS CONFIGURE A VIRTUAL ENVIRONMENT AGENT, (E.G.  
14 SANDBOXING) FOR INTERCEPTING AND MONITORING THE SYSTEM, WHICH  
15 IS TRAFFIC RECEIVED THEN CREATES A BEHAVIORAL ANALYSIS REPORT."

16 THAT'S AN EXAMPLE OF CISCO -- I'M SORRY, FINJAN --  
17 PROVIDING MORE CLARITY AS TO WHAT IT VIEWS TO BE THE VIRTUAL  
18 ENVIRONMENT AGENT.

19 THE VIRTUAL ENVIRONMENT AGENT HERE IS THE AGENT THAT WAS  
20 INVOLVED IN THE SANDBOXING.

21 NOW IF YOU TURN TO PAGE 6, THE NEXT PAGE, AND ON PAGE 6  
22 WHICH IS STILL RELATED TO CLAIM 1, IF YOU LOOK IN THE MIDDLE OF  
23 THE PAGE UNDERNEATH THE BULLET POINT, THERE'S A PARAGRAPH THAT  
24 BEGINS WITH, "AS SHOWN BELOW."

25 AND IN THAT PARAGRAPH, I WILL JUST READ THE SECOND



1 SENTENCE WHICH IS "CISCO AMP FOR NETWORKS INCLUDE COMPONENTS  
2 WHICH ANALYZE AND DETECT EXECUTABLE CODE WITHIN THE  
3 DOWNLOADABLE INFORMATION AND PROVIDE AN OPTION TO TRANSMIT THE  
4 MOBILE PROTECTION CODE WHICH INCLUDES EXECUTABLE ENVIRONMENTS,  
5 CODE INJECTION AND WRAPPER FILES INTO SANDBOXED ENVIRONMENT,  
6 (WHICH IS A VIRTUAL ENVIRONMENT THAT MIMICS A PC ENDPOINT FOR  
7 USER MACHINE) SUCH AS THREATGRID.

8 SO THERE'S NO QUESTION THROUGHOUT THE SERIES OF THESE  
9 DISCLOSURES IN THE INFRINGEMENT CONTENTIONS, THAT CISCO SHOULD  
10 KNOW THAT THE VIRTUAL ENVIRONMENT IS A SANDBOX ENVIRONMENT.  
11 AND THE AGENT IS AN AGENT THAT PARTICIPATES IN THIS PROCESS OF  
12 SANDBOXING. THAT'S CLEAR FROM THE CONTEXT OF THE DISCUSSION  
13 HERE.

14 BUT WHAT'S MORE IS THAT IF WE LOOK AT HOW CISCO'S OWN  
15 ENGINEERS USE THE PHRASE "VIRTUAL ENVIRONMENT AGENT," THEY USED  
16 IT THE SAME WAY AS THEY USED THE WORD [REDACTED]

17 SO I WOULD LIKE -- DO YOU HAVE ACCESS TO THE DECLARATIONS  
18 THAT WERE SUBMITTED ATTACHED TO THE MOTIONS FOR SUMMARY  
19 JUDGEMENT, YOUR HONOR? THIS IS DOCKET 377.

20 MR. GAUDET: YOUR HONOR, THIS IS MATT GAUDET.

21 IF I COULD, I'M GOING TO OBJECT TO THAT. I DON'T HAVE  
22 ACCESS TO THAT HERE, AND GIVEN THAT THIS ISSUE WAS ABOUT  
23 NOTICE, IT DOES SEEM A LITTLE ODD TO BE GOING TO SOMETHING  
24 THAT'S NOT EVEN IN THIS RECORD.

25 THE COURT: THAT'S FINE.

1 MR. KAZI, WHY DON'T YOU JUST REFER TO IT. EVERYONE  
2 DOESN'T HAVE ACCESS UNDER THESE CONDITIONS. IF YOU WANT TO  
3 MAKE A BRIEF REFERENCE, AND LET'S MOVE ON.

4 MR. KAZI: SURE. YES.

5 I WILL JUST MAKE THE REFERENCE.

6 SO IN THE SUMMARY JUDGEMENT BRIEFING, YOUR HONOR, CISCO  
7 SUBMITTED DECLARATIONS FROM ITS ENGINEERS. ONE OF THE  
8 ENGINEERS WAS VICE PRESIDENT MATTHEW WATCHINSKI. AND ANOTHER  
9 ENGINEER WAS PRINCIPLE ENGINEER CRAIG BROZEFSKY. BOTH OF THOSE  
10 DECLARATIONS ARE ATTACHED TO CISCO'S MOTION FOR SUMMARY  
11 JUDGEMENT. THE WATCHINSKI DECLARATION IS DOCKET 377-23. THE  
12 BROZEFSKY DECLARATION IS DOCKET 377-9.

13 IF YOU LOOK AT PARAGRAPH 6 OF THE WATCHINSKI DECLARATION,  
14 HE'S DESCRIBING A VIRTUAL ENVIRONMENT. AND HE SAYS THAT "THE  
15 VIRTUAL ENVIRONMENT AGENT IS USED TO OBSERVE BEHAVIORS INSIDE  
16 OF THE VIRTUAL MACHINE DURING EXECUTION OF THE FILE IN THAT  
17 VIRTUAL MACHINE." AND THAT'S A DIRECT QUOTE FROM HIS STATEMENT  
18 IN HIS DECLARATION.

19 NOW, CISCO ENGINEER BROZEFSKY SUBMITS A DECLARATION THAT  
20 USES THE EXACT SAME LANGUAGE TO DESCRIBE THE FUNCTIONALITY OF  
21 THE A [REDACTED] HE SAYS THAT "THREATGRID USES A [REDACTED]  
22 [REDACTED] TO OBSERVE BEHAVIORS INSIDE OF THE VIRTUAL MACHINE  
23 DURING EXECUTION OF THE FILE IN THAT VIRTUAL MACHINE."

24 POINT BEING, YOUR HONOR, THAT EVEN CISCO'S OWN ENGINEERS  
25 USE THE PHRASE "VIRTUAL ENVIRONMENT AGENT" TO REFER TO THE

1 EXACT SAME FUNCTIONALITY AS THE [REDACTED] AND THIS IS IN  
2 THE DECLARATION THAT CISCO SUBMITTED WITH ITS MOTION FOR  
3 SUMMARY JUDGEMENT.

4 SO WE DON'T THINK IT'S CREDIBLE FOR CISCO TO COME BACK  
5 PLEAD IGNORANCE TODAY AS TO WHAT A VIRTUAL ENVIRONMENT AGENT IS  
6 OR HOW IT RELATES TO A [REDACTED]

7 SO I WOULD LIKE TO MOVE ON TO THE [REDACTED] ISSUE, UNLESS  
8 THERE'S ANY QUESTIONS ON THAT, YOUR HONOR.

9 THE COURT: THAT'S FINE. THANK YOU. LET'S MOVE ON.

10 MR. KAZI: OKAY.

11 WITH RESPECT TO THE ISSUE OF [REDACTED] NOW  
12 THE ISSUE HERE IS A LITTLE BIT DIFFERENT THAN WITH RESPECT TO

13 [REDACTED]  
14 SO AS I UNDERSTOOD MR. GAUDET'S ARGUMENT, HE SAID THAT THE  
15 [REDACTED] COULD NOT CORRESPOND TO THE  
16 FUNCTIONALITY DISCLOSED IN THE INFRINGEMENT CONTENTIONS BECAUSE  
17 THE FUNCTIONALITY THAT HE POINTED TO WAS OF INFORMATION THAT  
18 WAS TRANSMITTED.

19 AND SO I UNDERSTAND THAT TO BE AN ARGUMENT THAT RELATES TO  
20 THE [REDACTED] ISSUE, BUT THAT'S JUST NOT AN ARGUMENT  
21 THAT APPLIES TO [REDACTED]

22 AND THE REASON WHY IS BECAUSE THE SUMMARY JUDGEMENT ORDER,  
23 WHEN FINJAN SURVIVED SUMMARY JUDGEMENT ON THE THEORIES RELATED  
24 TO [REDACTED] FOR THE '633 PATENT, FINJAN'S BASIS  
25 FOR SURVIVING SUMMARY JUDGEMENT WAS NOT THAT THE [REDACTED] AND

1 [REDACTED] WERE ALREADY RESIDENT IN THE SANDBOX.

2 THE REASON THAT JUDGE FREEMAN FOUND THAT [REDACTED]  
3 SURVIVED SUMMARY JUDGEMENT WAS BECAUSE JUDGE FREEMAN FOUND THAT  
4 THERE WAS AT LEAST A SUFFICIENT FACTUAL QUESTION AS TO WHETHER  
5 A [REDACTED] WAS AN COMPUTABLE THAT MONITORED MALICIOUS CODE.

6 AND SIMILARLY, THE REASON WHY [REDACTED] SURVIVED WAS  
7 BECAUSE CISCO'S DISPUTE OR CISCO'S MOTION FOR SUMMARY JUDGEMENT  
8 WAS THAT [REDACTED] WERE JUST NOT USED, AND JUDGE FREEMAN FOUND  
9 THAT THERE WAS AT LEAST A FACTUAL ISSUE AS TO WHETHER THERE WAS  
10 USE OR NOT.

11 AND THAT DISCUSSION, THAT'S IN THE SUMMARY JUDGEMENT ORDER  
12 DOCKET 487, PAGE 18 REFERS TO [REDACTED], AND PAGE 20 RECITES

13 [REDACTED].

14 SO THE REASONS WHY [REDACTED] SURVIVE HAD  
15 NOTHING TO DO WITH WHETHER OR NOT THOSE CONCEPTS WERE  
16 TRANSMITTED TO THE SANDBOX.

17 THE REASON I BRING THAT UP AND THE REASON IT'S RELEVANT IS  
18 BECAUSE THE PASSAGES IN THE INFRINGEMENT CONTENTIONS THAT  
19 FINJAN HAS POINTED TO ON PAGE 35 FOR [REDACTED]  
20 THEY ARE ALSO IN THAT SECOND PARAGRAPH.

21 AND I THINK WE TOUCHED UPON THIS A LITTLE BIT IN  
22 MR. GAUDET'S ARGUMENT. THERE'S A SENTENCE IN THAT SECOND  
23 PARAGRAPH THAT IS ABOUT HALFWAY THROUGH THE PARAGRAPH THAT  
24 SAYS, "THE CODE AND INFORMATION PERTAINING TO THE TASK AND  
25 PARAMETERS RELEVANT TO THREATGRID AND/OR TALOS, IS THE MOBILE

1 PROTECTION CODE."

2 SO THE REFERENCE IN THE INFRINGEMENT CONTENTIONS TO CODE  
3 AND INFORMATION PERTAINING TO TASK AND PARAMETERS, THAT CODE IS  
4 SOMETHING THAT IS TRANSMITTED TO THE SANDBOX. I THINK THAT'S  
5 CLEAR IN THE INFRINGEMENT CONTENTIONS, AND FINJAN IS NOT  
6 CONTENDING OTHERWISE.

7 BUT THE FACT THAT THE CODE AND INFORMATION PERTAINING TO  
8 THE TASK AND PARAMETERS IS TRANSMITTED TO THE SANDBOX, DOES NOT  
9 DISQUALIFY IT FROM BEING CONSIDERED MOBILE PROTECTION CODE, AND  
10 THAT'S JUST NOT THE REASON WHY THOSE PARTICULAR CONCEPTS  
11 SURVIVE SUMMARY JUDGEMENT.

12 SO WITH THAT, I THINK I'VE ADDRESSED THE QUESTIONS THAT  
13 MR. GAUDET RAISED. I'M HAPPY TO ANSWER ANY MORE QUESTIONS YOU  
14 HAVE, YOUR HONOR, ON THESE PARTICULAR ISSUES, OR I CAN JUST GO  
15 AHEAD AND GIVE IT BACK TO MR. GAUDET.

16 THE COURT: WELL, I WANT TO BE SURE I UNDERSTAND YOUR  
17 POINT, MR. KAZI, WHICH IS THAT AS TO THE LANGUAGE, THE  
18 PARAMETERS TO RUN THE SAMPLE FILE, WHICH IS WHAT WAS IDENTIFIED  
19 AS THE REPLACEMENT LANGUAGE FOR [REDACTED] THAT  
20 THAT IS TRANSMITTED.

21 MR. KAZI: I THINK THAT THEY CAN BE TRANSMITTED, AND  
22 I THINK WHETHER OR NOT THEY ARE TRANSMITTED, WHETHER OR NOT THE  
23 PARAMETERS ARE TRANSMITTED WAS NOT RELEVANT TO THE COURT'S  
24 SUMMARY JUDGEMENT DETERMINATION. THE ORDER SAID AS MUCH.

25 THE ORDER SAYS THAT THE BASIS FOR SURVIVING SUMMARY

1 JUDGEMENT, AND THE ORDER LISTS THE BASIS, AND IT HAS NOTHING TO  
2 DO WITH WHETHER OR NOT THE PARAMETERS WERE TRANSMITTED.

3 THE COURT: ALL RIGHT. ALL RIGHT.

4 THANK YOU, MR. KAZI, THAT WAS HELPFUL.

5 MR. GAUDET, TO WRAP THIS UP, I DO UNDERSTAND WHAT YOU  
6 STATED IN THE PAPERS AND IN YOUR OPENING ARGUMENTS, BUT THERE  
7 ARE SOME ISSUES THERE I'M SURE YOU WOULD LIKE TO ADDRESS.

8 MR. GAUDET: THANK YOU, YOUR HONOR.

9 THE FIRST THING I WANTED TO DO WAS ACTUALLY START FROM THE  
10 COURT'S NOVEMBER 11, 2019, ORDER, ADDRESSED THIS QUESTION OF  
11 WHETHER OR NOT LEAVE IT AMEND HAS ALREADY BEEN GRANTED,  
12 SPECIFICALLY SUCH THAT THESE THINGS ARE ALREADY IN THE CASE.  
13 AND --

14 THE COURT: GIVE ME A DOCKET NUMBER, PLEASE.

15 MR. GAUDET: SURE.

16 SO THIS IS THE SAME, THIS IS THE SAME ORDER THAT FINJAN'S  
17 COUNSEL JUST READ FROM ON PAGE 6. AND I ACTUALLY -- I TELL YOU  
18 WHAT, I WILL SEE IF MR. POWERS, COULD YOU PLEASE TRACK DOWN A  
19 DOCKET NUMBER FOR THIS ONE?

20 THE COURT: I THINK IT'S 397.

21 MR. GAUDET: YES, YOUR HONOR. TERRIFIC.

22 SO FINJAN'S COUNSEL READ WHERE THE COURT DIRECTED THE  
23 EXPERT TO TAKE STEP 1 TO REDRAFT SOMETHING. BUT THE CONCLUSION  
24 ON THE NEXT PAGE ON PAGE 7 SAYS WHAT'S SUPPOSED TO HAPPEN NEXT.  
25 AND THAT IS AT LINE 23 AND A HALF.

1 IT SAYS THE COURT IS WILLING TO CONSIDER A REASONABLE  
2 PROPOSAL BY FINJAN TO CORRECT ITS EXPERT REPORTS TO ALIGN WITH  
3 ITS INFRINGEMENT CONTENTIONS. EXPERTS REDRAFT, THE COURT WILL  
4 CONSIDER IT.

5 THE COURT HAS NEVER ISSUED A RULING SAYING IT WAS OKAY.  
6 AND THAT IS FURTHER PROVEN BY THE NEXT DOCUMENT THAT FINJAN'S  
7 COUNSEL CITED NAMING THE SUMMARY JUDGEMENT ORDER, WHERE THIS  
8 ORDER WAS AFTER, AFTER FINJAN HAD EXCHANGED ITS FIRST AMENDED  
9 PROSECUTE POSED REPORT.

10 AFTER THE HEARING, WE SAID THIS JUST CAME IN, THERE'S ALL  
11 KINDS OF DISAGREEMENTS. AND AT THAT POINT PER WHAT FINJAN'S  
12 COUNSEL JUST READ, THE COURT SAID, I'M NOT AWARE OF ANY AMENDED  
13 REPORT. IN OTHER WORDS, NOTHING HAS BEEN ACCEPTED YET.

14 AND THAT'S EXACTLY THE ISSUE THAT WAS REFERRED TO YOU,  
15 YOUR HONOR, IS ARE WE GOING TO ALLOW THEM TO AMEND THESE  
16 REPORTS.

17 AND THEIR ANSWER TO YOUR QUESTION, RIGHT, OF WE GET TO  
18 TRIAL, QUESTION COMES UP, YOU TRY IT TALK ABOUT IT, YOU KNOW,  
19 THE FUNCTIONAL EQUIVALENT OF THE [REDACTED] WHAT ARE YOU  
20 GOING TO DO? LOOK AT WHAT HE POINTED TO, YOUR HONOR. HE DID  
21 NOT POINT TO YOU TO ANY OF THE PROPOSED AMENDMENTS.

22 THIS IS A REDLINED DOCUMENT HE'S SHOWING YOU. HE SHOWED  
23 YOU CLEAN PAGES, BEGINNING WITH 4319, THE PARAGRAPH 4319, IT IS  
24 LITERALLY VERBATIM TO THE INFRINGEMENT CONTENTIONS THAT WE HAVE  
25 BEEN TALKING ABOUT. IT IS NOT AMENDED, RIGHT. THEY DON'T NEED

1 YOUR PERMISSION TO DO THAT LANGUAGE, AND THAT LANGUAGE IS NOT  
2 THE SUBJECT OF THIS MOTION.

3 OUR POINT IS THEY HAVE ALREADY GOT THAT, WE ARE NOT  
4 WORRIED ABOUT THAT. THEY DIDN'T LOOK AT THAT FOR SUMMARY  
5 JUDGEMENT. BUT THE ONLY POSSIBLE REASON TO LET THEM TAKE SOME  
6 OF THESE WORDS AND RE-SCRAMBLE THEM INTO OTHER PARAGRAPHS, IS  
7 TO ARGUE THAT NOW THEY'VE GOT SOMETHING ELSE, THEY GOT  
8 SOMETHING BIGGER. THAT'S THE ONLY POSSIBLE OUTCOME OF THIS  
9 AMENDMENT.

10 BECAUSE WE KNOW WHAT THEIR INTENTION IS. THEIR INTENTION  
11 IS TO BE ABLE TO ARGUE TO THE COURT, HERE IT IS IN THIS REPORT,  
12 SOMETHING NEW AND DIFFERENT IS DISCLOSED HERE AND THIS IS, OR  
13 RATHER WE ARE DISCLOSING, HERE'S SOMETHING THAT'S ALREADY  
14 RESIDENT AT THE COMPONENT. THAT IS THE REASON THEY ARE TRYING  
15 TO MAKE THAT AMENDMENT.

16 AND THAT IS EXACTLY THE QUESTION FOR YOU IS, WAS SUCH A  
17 THING WITH RESPECT TO THE [REDACTED]  
18 [REDACTED] ACTUALLY DISCLOSED IN THE INFRINGEMENT CONTENTIONS?  
19 AND IT'S NOT.

20 AND SO, I MEAN, HE HAS ABSOLUTELY PROVEN MY POINT. YOU  
21 SHOULD GRANT THIS MOTION. SHE DOESN'T NEED AN AMENDMENT IN  
22 ORDER TO DO WHAT HE SHOWS YOU. AND THAT'S NOT OUR FEAR. OUR  
23 FEAR IS THEM RE-SCRAMBLING OTHER THINGS AND MAKING THEM FOR THE  
24 EXPRESS PERSON AND WE KNOW IT'S FOR THE EXPRESS PURPOSE OF  
25 SAYING THEY SOMEHOW TRACK THE [REDACTED]



1 THE COURT: WHAT OTHER THINGS, MR. GAUDET? WHAT  
2 OTHER THING?

3 MR. GAUDET: YOUR HONOR --

4 THE COURT: BECAUSE -- LET ME -- WHAT I HEAR YOU  
5 SAYING IS THERE'S NO ISSUE ABOUT AMENDMENT TO THE REPORT AND  
6 NOW THEY ALIGN WITH CONTENTIONS.

7 THE LANGUAGE IN THE REPORT HAS ALWAYS BEEN THERE, THE  
8 LANGUAGE IN THE CONTENTIONS HAS ALWAYS BEEN WHAT IT IS --  
9 LOOKING AT THE OPERATIVE CONTENTIONS. THE LANGUAGE IN THE  
10 REPORT MIRRORS THAT, AND THAT IS WHAT FINJAN IS POINTING TO IN  
11 SUPPORT OF THEIR THEORY OF THE MOBILE PROTECTION CODE BEING  
12 RESIDENT IN THE SANDBOX.

13 MR. GAUDET: YOUR HONOR --

14 THE COURT: SO WHAT IS THE LANGUAGE THAT CONCERNS  
15 YOU? WHAT IS THE -- BECAUSE THIS HAS COME UP, THIS IS BROUGHT  
16 BEFORE ME BECAUSE THE REPORT HAS BEEN AMENDED, BECAUSE THEY  
17 MADE CHANGES, THAT'S WHAT JUDGE FREEMAN SAID. IF YOU MAKE  
18 CHANGES TO THE REPORT, IT'S GOT TO TIE BACK TO THE CONTENTIONS.  
19 AND IF THERE'S A FIGHT ABOUT THAT, TAKE IT TO JUDGE VAN KEULEN.

20 BUT IF THEY ARE RELYING ON LANGUAGE THAT HAS NOTHING TO DO  
21 WITH THE CHANGES THEY HAVE MADE, THEN WE ARE BACK TO A FIGHT  
22 ABOUT WHETHER AN OPINION OFFERED AT TRIAL IS WITHIN THE SCOPE  
23 OF THE REPORT. AREN'T WE?

24 MR. GAUDET: AND YOUR HONOR, FOR EXAMPLE, IF WE, AND  
25 I'M KIND OF -- I'M DOING THIS ON THE FLY. HE TOOK YOU TO A

1 SECTION THAT WASN'T --

2 THE COURT: HE DID.

3 MR. GAUDET: SO I WANTED FOR EXAMPLE TO TAKE YOU TO,  
4 THIS IS JUST AN EXAMPLE, TAKE YOU TO, IT'S PAGE 892.

5 THE COURT: SO ARE WE IN EXHIBIT 2 OF FINJAN'S  
6 OPPOSITION?

7 MR. GAUDET: CORRECT.

8 THE COURT: AND WE ARE AT PAGE 892, WHICH BEGINS WITH  
9 PARAGRAPH, LET'S SEE, I HAVE PDF 892, YOU WANT PRINTED  
10 PAGE 892?

11 MR. GAUDET: CORRECT.

12 AND WHILE I'M DOING THIS, I WILL ASK MR. POWERS TO TELL ME  
13 WHERE THE DISCUSSION OF SECTION 14-B IS.

14 BUT YOUR HONOR, IF YOU TELL ME WHEN YOU ARE THERE AND I  
15 WILL SHOW YOU, THIS WILL GIVE YOU SOME EXAMPLES.

16 THE COURT: YEAH, I'M JUST GRABBING IT. BECAUSE THE  
17 EXHIBIT IS LARGE, IT'S ALL IN LARGE CHUNKS. OKAY. I'M THERE.  
18 892. PRINTED PAGE 892.

19 MR. GAUDET: YEAH.

20 THE COURT: OKAY. PARAGRAPH 1600.

21 MR. GAUDET: WE WILL ACTUALLY GO TO 1599, THAT WILL  
22 BE FINE.

23 THE COURT: I'M SORRY?

24 MR. GAUDET: PARAGRAPH 1999 WILL BE A FINE EXAMPLE.

25 HERE, WE HAVE A REDLINE. SO THE STUFF THAT FINJAN'S

1 COUNSEL SHOWED YOU IS NOT WHAT THIS MOTION IS ABOUT. THIS  
2 MOTION IS ABOUT THEIR EFFORT TO CHANGE THE REPORT, OKAY.

3 SO HERE WE HAVE THE REDLINE. THE OLD LANGUAGE WAS THE  
4 THINGS THAT WERE CONSIDERED AT SUMMARY JUDGEMENT, RIGHT.  
5 SCRIPT USED TO RELATE CERTAIN USER ACTIONS, MASTER SCRIPT,  
6 RIGHT. THEY WANT TO SUBSTITUTE THAT OUT AND PUT IN THEIR SORT  
7 OF MAGIC PHRASE, "PARAMETERS TO RUN THE FILE OR URL."

8 AND THIS HAPPENS OVER, AND OVER, AND OVER, AND OVER AGAIN.  
9 AND THEY WANT TO DO THE SAME THING WHERE THEY SAY [REDACTED]  
10 [REDACTED] IN OTHER PARTS, TO TAKE THAT OUT AND PUT IN THE PHRASE,  
11 VIRTUAL ENVIRONMENT AGENT. BUT OTHERWISE, THE ANALYSIS IS  
12 LITERALLY THE SAME. IT'S EXACTLY THE SAME SUPPORTING SENTENCES  
13 AROUND IT THAT THEY HAD.

14 AND THIS IS SO IMPORTANT BECAUSE WHEN THEY ARE TALKING  
15 ABOUT THE [REDACTED] AND ALL THE EXPLANATION OF WHAT IT  
16 DOES, AND WHAT ITS FUNCTIONS ARE AND HOW IT'S ALWAYS BEEN  
17 THERE, THEY JUST WANT TO DROP IN THE PHRASE, VIRTUAL  
18 ENVIRONMENT AGENT THERE.

19 SO NOW IN THAT CONTEXT, SURE THE VIRTUAL ENVIRONMENT  
20 AGENT --

21 THE COURT: YES, MR. GAUDET, YES.

22 MR. GAUDET: JOE, DO YOU HAVE AN EXAMPLE OF THAT?

23 MR. POWERS: LET ME GET OFF MUTE. I'M TRYING TO  
24 NAVIGATE TO THAT EXHIBIT. EXHIBIT 2 OF THE OPPOSITION.

25 MR. GAUDET: CORRECT.

1 MR. POWERS: YOU WANT THE 14-D ANALYSIS?

2 MR. GAUDET: YES.

3 MR. POWERS: SCROLLING THROUGH THE TABLE OF CONTENTS,  
4 IT DIRECTS US TO CLAIM 14 ANALYSIS STARTS ON PAGE 2117, AND THE  
5 14-D ANALYSIS STARTS ON 2566.

6 MR. GAUDET: AND THEN -- I CHANGED THE SLIDE.

7 WAS IT PAGE 450 OR 455 THAT HAD THE GENERAL DISCUSSION OF  
8 THE [REDACTED] 451 OF THEIR ORIGINAL REPORT. I'M SORRY,  
9 OF EXHIBIT 1.

10 MR. POWERS: IT'S SHOWING A STRIKE THROUGH, FOR  
11 EXAMPLE IN THIS EXHIBIT, ON PAGE 382, PARAGRAPH 632, AS AN  
12 EXAMPLE.

13 MR. GAUDET: YOU ARE ON EXHIBIT 2, JOE?

14 MR. POWERS: YES.

15 MR. GAUDET: YOUR HONOR, THANK YOU FOR BEARING WITH  
16 US JUST FOR A MOMENT.

17 THE COURT: THAT'S ALL RIGHT. WHAT WAS THAT, 382?

18 MR. POWERS: I'M LOOKING AT PAGE 382 TO 392 OF THE  
19 PDF. AND IT'S PARAGRAPH 632.

20 THE COURT: OKAY. ALL RIGHT.

21 AGAIN, I'M LOOKING, AND JUST AS AN EXAMPLE, SO [REDACTED]  
22 [REDACTED] IS STRUCK OUT, VIRTUAL ENVIRONMENT AGENT IS THE  
23 REPLACEMENT LANGUAGE, AND WHEREVER THERE'S A DISCUSSION ABOUT  
24 NOW, IN THE AMENDED REPORT, ABOUT VIRTUAL ENVIRONMENT AGENT  
25 REPLACING [REDACTED]

1 MR. GAUDET: YOUR HONOR, IF I COULD HAVE ONE MORE  
2 SECOND. IT'S PARAGRAPH 650 -- JOE?

3 MR. POWERS: THE ONE WE JUST MENTIONED?

4 MR. GAUDET: YEAH. YOUR HONOR, I APOLOGIZE.

5 MR. POWERS: PARAGRAPH 632, THAT'S PDF PAGE 392, PAGE  
6 382 OF --

7 THE COURT: YEAH, WE WERE THERE.

8 MR. GAUDET: OKAY. THIS IS EXACTLY THE POINT  
9 YOUR HONOR, ON PARAGRAPH 632, OKAY.

10 THIS PARAGRAPH IS TALKING UN AMBIGUOUSLY, ORIGINALLY ABOUT  
11 THE [REDACTED] AND IT ONLY MAKES SENSE IF YOU ARE TALKING  
12 ABOUT THE [REDACTED]

13 AND SO YOU COULD SUBSTITUTE IN THE WORD REFRIGERATOR FOR  
14 THE WORD [REDACTED] AND THE EVIDENCE AND THE SUPPORT WOULD  
15 STILL BE POINTING TO THE FUNCTIONALITY OF THE [REDACTED]  
16 OKAY.

17 WHAT THEY WANT TO DO IS BY DROPPING THE PHRASE "VIRTUAL  
18 ENVIRONMENT AGENT" IN THERE, ALL RIGHT, THEY'VE NOW GIVEN  
19 THEMSELVES, BY DEFINITION, EXACTLY THE DISCLOSURE THEY NEED TO  
20 SHOW TO THE COURT AT TRIAL, IN ORDER TO PROVE THAT THEY SHOULD  
21 BE ABLE TO TALK ABOUT SOMETHING THAT IS ATTACHED TO EVERY  
22 RUNNING VIRTUAL MACHINE, NOT WITHIN IT, BUT ATTACHED TO IT,  
23 THAT IS ALREADY THERE THAT -- THIS IS DESCRIBING THE  
24 FUNCTIONALITY OF THE [REDACTED]

25 BUT NOWHERE DID THEY MAKE THIS CORRELATION BETWEEN [REDACTED]

1 [REDACTED] AND THIS PHRASE VIRTUAL ENVIRONMENT AGENT ANYWHERE IN  
2 THE CONTENTIONS.

3 SO IF THEY ARE ALLOWED TO MAKE THIS PLACEMENT, THEY HAVE  
4 SOLVED THEIR PROBLEM AT TRIAL. BECAUSE NOW AT TRIAL, WHEN THE  
5 QUESTION IS ASKED, I'M GOING TO POINT TO PARAGRAPH 632 AND SAY,  
6 IT'S RIGHT HERE, YOUR HONOR, WE ARE NOT GOING TO USE THE PHRASE

7 [REDACTED] BUT THE PRECISE FUNCTIONALITY OF THE [REDACTED]  
8 [REDACTED] IS NOW IN OUR REPORT.

9 AND OUR ANSWER IS, RIGHT, BUT YOUR HONOR, THEY SHOULDN'T  
10 HAVE BEEN ALLOWED TO PUT THE VIRTUAL ENVIRONMENT AGENT IN THE  
11 REPORT HERE BECAUSE THE VIRTUAL ENVIRONMENT AGENT, THAT'S NOT A  
12 PHRASE THAT EVER WOULD HAVE PUT US ON NOTICE ABOUT THE [REDACTED]

13 [REDACTED]  
14 AND AS AN ASIDE, DURING FINJAN COUNSEL'S DISCUSSION, HE  
15 COULD NOT ADDRESS THE FACT THAT IT LITERALLY CONTRADICTS THE  
16 DISCLOSURE MUCH A VIRTUAL ENVIRONMENT AGENT BEING SOMETHING  
17 THAT IS INSIDE AND THAT, YOU KNOW, THE TWO PARAGRAPHS LATER,  
18 THAT WAS TRANSMITTED.

19 AND IN FACT, HE WENT SO FAR AS TO SHOW FOR AN EXAMPLE,  
20 WHERE THE VIRTUAL ENVIRONMENT AGENT INCLUDES AN ACTION, E.G.  
21 SANDBOXING. SO IT'S LITERALLY EVERYTHING, WHICH IS THE POLAR  
22 OPPOSITE OF NIT PICKY DISCLOSURE.

23 SO THEY ARE TAKING A WORD THAT IS HOPELESSLY GENERIC,  
24 OKAY, NUMBER ONE, AND EVEN IN ITS HOPELESS GENERICNESS, STILL  
25 EXCLUDED THE VERY THING THEY ARE TRYING TO INCLUDE. AND THEY

1 ARE GETTING PERMISSION TO DROP IT INTO A PARAGRAPH THAT NOW  
2 UNAMBIGUOUSLY DESCRIBES THE VERY THING THEY DIDN'T GIVE US  
3 NOTICE ON AND THEY HAVE SOLVED THEIR PROBLEM AT TRIAL, WE HAVE  
4 NO OBJECTION NOW. IF THIS AMENDMENT IS PERMITTED, WE HAVE NO  
5 OBJECTION AT TRIAL, AND THEY HAVE DONE AN ENDRUN AROUND THE  
6 ENTIRE PROCESS.

7 THE COURT: BUT WHERE THEY HAVE DROPPED IT IN,  
8 MR. GAUDET, IF IT IS THE ENTIRE SECTION VERBATIM OUT OF THE  
9 CONTENTION, THIS IS MY POINT, THEN THE FIGHT IS, WHAT IS  
10 DISCLOSED? IT'S DISCLOSED IN THE CONTENTIONS, IT'S DISCLOSED  
11 THIS THE REPORT. YOUR ISSUE IS HE DOESN'T DISCLOSE WHAT THEY  
12 SAY IT DOES.

13 MR. GAUDET: YOUR HONOR, THANK YOU, AND LET ME  
14 CLARIFY THIS BECAUSE I MAY HAVE JUMPED OVER SOME THINGS.

15 THIS PARAGRAPH 632, NOTHING LIKE IT IS IN THE CONTENTIONS.  
16 NOTHING.

17 THE COURT: I UNDERSTAND THAT.

18 SO -- BUT WE HAVE BEEN, AND IN THE PAPERS, EVERYBODY  
19 FOCUSED ON, AND I THINK APPROPRIATELY, THE LANGUAGE IN THE  
20 REPORT THAT YOU ARE THE OPERATIVE CONTENTION, WHERE IN THE  
21 REPORT IS IT ADDRESSING CLAIM 14 SECTION D, WHERE THERE'S A  
22 SUBSTITUTION THAT YOU'RE OBJECTING TO?

23 MR. GAUDET: THAT'S EXACTLY THE POINT, YOUR HONOR.

24 THAT WAS HIS PARAGRAPH 4319. THERE IS NOT EVEN A PROPOSED  
25 SUBSTITUTION THERE.

1           IN OTHER WORDS, THE LANGUAGE THAT HE POINTED TO IN THE  
2           REPORT AS THE BASIS OF THIS MOTION, IS IRRELEVANT IN THIS  
3           MOTION, IT DOESN'T EVEN HAVE A PROPOSED SUBSTITUTION.

4           WE ARE FINE WITH THAT. THEY CAN KEEP THAT IN. ALL OF THE  
5           PROPOSED SUBSTITUTIONS FALL IN LINE WITH THIS EXAMPLE WHERE THE  
6           SUBSTITUTION IS INTO A PARAGRAPH THAT DOES NOT COME OUT OF THE  
7           INFRINGEMENT CONTENTIONS.

8           BUT THEY ARE TAKING WORDS THAT APPEAR IN OTHER CONTEXT IN  
9           THE INFRINGEMENT CONTENTIONS AND DROPPING THEM INTO NEW  
10          PARAGRAPHS OR PARAGRAPHS THAT ONLY APPEAR IN THE REPORT AND NOT  
11          THE CONTENTIONS; AND BY DOING SO, GIVE THOSE WORDS LIKE VIRTUAL  
12          ENVIRONMENT AGENT A WHOLE NEW MEANING.

13          SO WE DO NOT OBJECT AT ALL, WE DON'T HAVE TO. THE  
14          LANGUAGE HEY SHOWED YOU THE VERBATIM STUFF FROM THE REPORT, IT  
15          WAS ALWAYS IN THERE. THEY NEVER AMENDED IT. THAT'S NOT  
16          SUBJECT TO THIS MOTION. WE ARE NOT TRYING TO STRIKE IT THEY  
17          DIDN'T RELY ON IT AT SUMMARY JUDGEMENT.

18          THE COURT: WELL, MR. GAUDET, WHERE IN YOUR PAPERS DO  
19          YOU MAKE THIS CLAIM THAT WHAT YOU WANT TO HAVE STRICKEN IS  
20          WHERE THEY ARE ADOPTING OR DROPPING IN THESE WORDS THAT  
21          MAINTAIN THE FUNCTIONALITY AND THE FUNCTIONALITY DOESN'T TIE  
22          BACK?

23          YOU ARE SAYING, I'M HEARING FOR THE FIRST TIME FROM CISCO,  
24          OH HERE'S A PARAGRAPH THAT IS FUNDAMENTAL TO THE EXPERT'S  
25          OPINION, IT'S BEEN AMENDED. IT'S FUNDAMENTAL TO THE EXPERT'S



1 OPINION BUT IT IS NOT REJECTED ANYWHERE IN THE CONTENTION.

2 I MAY HAVE OVERLOOKED IT, SO THAT'S WHY I'M ASKING THE  
3 QUESTION.

4 MR. GAUDET: YOUR HONOR, IF YOU BEGIN, BOTH IN OUR  
5 OPENING BRIEF AND IN OUR REPLY, THAT WE ADDRESS, IT'S JUST  
6 THREE WORDS, YOUR HONOR, IT'S "VIRTUAL ENVIRONMENT AGENT," IT'S  
7 [REDACTED] AND IT'S [REDACTED]

8 AND OUR POINT IS EVERY SINGLE PLACE, AND THIS IS ONE  
9 EXAMPLE OF PROBABLY A THOUSAND, EVERY SINGLE PLACE THEY DO IT,  
10 THAT'S EXACTLY WHAT'S HAPPENING.

11 AND SO --

12 THE COURT: NOT EVERY PLACE, NOT EVERY PLACE.  
13 BECAUSE WE ARE LOOKING -- WE LOOKED AT EXAMPLES WHERE THE  
14 REPLACEMENTS ARE MADE IN THE 14-D DISCUSSION, AND YOU SAID IT  
15 DOESN'T MATTER.

16 MR. GAUDET: NO, NO. NO, YOUR HONOR. THOSE AREN'T  
17 REPLACEMENTS. THE 14-D DISCUSSIONS HE'S REFERRING TO, NOTHING  
18 WAS REPLACED. THAT'S EXACTLY HOW IT EXISTED IN THE ORIGINAL  
19 REPORT.

20 THE COURT: I UNDERSTAND WHERE THERE'S NO REDLINE.

21 BUT I'M LOOKING AT WHEN WE ARE TALKING ABOUT PARAMETERS TO  
22 RUN THE SAMPLE FILE. AND NOW THAT HAS BEEN DROPPED IN. BUT  
23 IT'S YOUR POINT THAT THAT'S NOT FOR ANY OF THE REMAINING TERMS?  
24 BACK AT PARAGRAPH 43.

25 MR. GAUDET: LET ME GO TO THAT EXAMPLE.

1 I'M SORRY, SAY THAT AGAIN, YOUR HONOR.

2 THE COURT: 4329.

3 MR. GAUDET: THANK YOU, YOUR HONOR.

4 4329. THE PROBLEM I HAVE IS THE VERSION OF THE DOCUMENT  
5 IS SO LARGE THAT EVERY TIME I MAKE A LITTLE MOVE, IT JUMPS ME  
6 MUCH FARTHER. 4329. THIS IS EXHIBIT 2, YOUR HONOR?

7 THE COURT: YES. OH, OH, I'M SORRY. OH, THAT'S  
8 RIGHT, THAT'S RIGHT. 4329.

9 OKAY.

10 MR. GAUDET: AND EXHIBIT 2?

11 THE COURT: RIGHT.

12 MR. GAUDET: OKAY.

13 THE COURT: ON PDF PAGE 2581, IF YOU ARE SEARCHING.

14 MR. GAUDET: WHAT'S SHOWING ME DOWN IS I'M USING A  
15 VERSION OF THIS ON OUR SYSTEM THAT HAS A DIFFERENT PDF AND I'M  
16 ALMOST THERE. I'M THREE PARAGRAPHS AWAY AND THEN I WILL BE  
17 THERE. SO THANK YOU AGAIN FOR YOUR PATIENCE, YOUR HONOR.  
18 OKAY. 4329.

19 THE COURT: SO WE ARE IN A DISCUSSION OF CLAIM 14 AND  
20 THERE'S A SUBSTITUTION. BUT YOUR POINT IS, IF I'M  
21 UNDERSTANDING IT, THAT THIS IS NOT SUBSTITUTING ANY OF THE  
22 EITHER OF THE THREE REMAINING DISPUTED TERMS.

23 MR. GAUDET: NO, YOUR HONOR. THIS IS THE PROBLEMATIC  
24 SUBSTITUTION. THIS LANGUAGE, THIS LANGUAGE WAS NOT IN THE  
25 ORIGINAL CONTENTIONS, OKAY.

1 SO THEY ARE TAKING -- THIS LANGUAGE IS DISCUSSING THINGS  
2 THAT THEY ACCUSED IN THE ORIGINAL REPORT, RIGHT, EXECUTING  
3 SCRIPTS, SCRIPTS USED TO EMULATE CERTAIN USER ACTIONS, GDB  
4 STUBS, MASTER SCRIPT FOR USING DYNAMIC ANALYSIS, RIGHT. THOSE  
5 ARE THE THINGS THEY ACCUSED IN THE ORIGINAL REPORT THAT WERE  
6 SUBJECT TO THE SUMMARY JUDGEMENT ORDER.

7 THE PARAGRAPH ITSELF DOES NOT EXIST IN THE INFRINGEMENT  
8 CONTENTIONS. BUT WHAT THEY NOW WANT TO DO, JUST LIKE THE  
9 EXAMPLE WITH THE [REDACTED] IS THEY WANT TO TAKE OUT THE  
10 SPECIFIC NAMES, OKAY, THAT WERE THE SUBJECT OF THE SUMMARY  
11 JUDGEMENT PAPERS, AND DROP IN THIS PHRASE, "PARAMETERS TO RUN  
12 THE SAMPLE FILE OR URL," THIS GENERIC PHRASE, WHICH BY ITSELF  
13 WOULDN'T TELL YOU ANYTHING, BUT IS NOW A SIMPLE CUT AND PASTE  
14 JOB, IT'S NOW DROPPED INTO A PARAGRAPH THAT GIVES YOU THE  
15 NOTICE YOU WOULD HAVE NEEDED TO MAKE SENSE OF THIS.

16 AND SO THEN IT GOES ON TO EXPLAIN, AND THIS IS JUST ONE  
17 EXAMPLE, BUT THIS IS EXACTLY THE PROBLEM, THAT THIS PARAGRAPH  
18 WITH ALL THE SURROUNDING EXPLANATION THAT LETS YOU KNOW YOU ARE  
19 AT THREATGRID. YOU ARE NOT BEING SENT THERE, OKAY.

20 ALL THAT EXPLANATION, THAT WOULD HAVE BEEN -- IT WOULD  
21 HAVE BEEN SO SIMPLE. IT WOULD HAVE TAKEN A SENTENCE FOR THE  
22 JUDGE TO SAY THESE ARE COMPONENTS OF THREATGRID OR SANDBOX.  
23 THE IDEA THAT THAT WOULD HAVE PROVEN A NEGATIVE, I DON'T GET.

24 BUT IN ANY EVENT, ALL THE EXPLANATION THAT'S HERE IS  
25 NOWHERE IN THE INFRINGEMENT CONTENTIONS, OKAY. BUT IF WE GET

1 TO TRIAL AND THEY SAY, WELL, YOU KNOW, IT'S THESE SCRIPTS, OR  
2 GDB STUBS, ACTUALLY, IN THAT PARTICULAR EXAMPLE ON SUMMARY  
3 JUDGEMENT, THE POINT IS THE SAME, OR THEY SAY IT'S THINGS, YOU  
4 KNOW, IT'S THINGS THAT ALLOW, JUST TO EXPLAIN IT BY A FUNCTION,  
5 THEY WILL COME STRAIGHT TO THIS PARAGRAPH, OKAY, THEY WILL  
6 POINT TO IT WITH THE SUBSTITUTION, AND THEY WILL SAY, ALL  
7 RIGHT, PARAMETERS TO RUN THE SAMPLE FILE OR URL, AND HERE IS  
8 THE EXAMPLE.

9 BUT THE PROBLEM IS, THAT THEORY, THIS THEORY IN THE  
10 PARAGRAPH, THAT IS EXECUTING SCRIPTS, SCRIPTS USED TO EMULATE  
11 CERTAIN USER ACTIONS, GDB STUBS, MASTER SCRIPT USED FOR DYNAMIC  
12 ANALYSIS. THAT STUFF, EITHER BY NAME OR BY FUNCTION, IS  
13 NOWHERE IN THE INFRINGEMENT CONTENTION.

14 AND SO THIS PHRASE, "PARAMETERS TO RUN THE SAMPLE FILE OR  
15 URL," THAT MORE GENERIC PHRASE THAT IS IN THE INFRINGEMENT  
16 CONTENTIONS, IS NEVER USED IN A WAY THAT WOULD DENOTE WHAT'S  
17 BEING DISCLOSED IN THIS REPORT.

18 SO BY LETTING THEM SWAP THIS PHRASE IN, YOU ARE SOLVING  
19 THEIR PROBLEM. JUST LIKE THAT, THEY NEVER NEED TO DEAL WITH  
20 THE INFRINGEMENT CONTENTIONS, WE ARE TAKING A PHRASE OUT OF THE  
21 INFRINGEMENT CONTENTIONS THAT WAS NEVER USED THIS WAY, THAT WAS  
22 GENERIC AND ALMOST MEANINGLESS; IN FACT, IT TALKED EXPRESSLY  
23 THAT IT WAS ONLY THINGS THAT WERE TRANSMITTED, AND WE ARE  
24 DROPPING THAT INTO THIS PARAGRAPH WHERE SUDDENLY THAT SAME  
25 PHRASE, FOR THE FIRST TIME, DENOTES THINGS THAT WE ARE ALWAYS

1 AT THE SANDBOX AND THAT BY FUNCTION, THE DESCRIPTION EXECUTING  
2 SCRIPT, SCRIPTS USED TO EMULATE CERTAIN USER ACTIONS, GDB  
3 STUBS, ET CETERA.

4 THAT'S WHY -- THE WHOLE POINT OF OUR MOTION IS THIS ALWAYS  
5 JUST COMES BACK TO, DID THE INFRINGEMENT CONTENTIONS, BY NAME  
6 OR FUNCTION, DESCRIBE THESE SEVEN COMPONENTS? AND IF THE  
7 ANSWER IS NO, THEY CAN'T AMEND FOR ANYTHING, THERE'S NO REASON  
8 TO LET THEM AMEND. AND THAT'S THE WHOLE POINT OF THE MOTION.

9 YOUR HONOR, DID THAT ADDRESS YOUR QUESTION WITH RESPECT TO  
10 THAT PARTICULAR PORTION?

11 THE COURT: IT DOES. IT DOES.

12 MR. GAUDET: OKAY.

13 A FEW OTHER ISSUES THAT I WANTED TO HIT, AND I WILL DO  
14 THIS QUICKLY, THE FIRST IS, THEY HAVE NO ANSWER TO THE FACT  
15 THAT THE DISCLOSURE LITERALLY CONTRADICTS THE [REDACTED]  
16 IT CAN'T BE THE SAME THING. IT IS NOT INSIDE. AND THAT  
17 REFERENCE OVER TO THE SANDBOXING THING, KIND OF PROVES THE  
18 POINT.

19 THE NOTION THAT IF WE DIDN'T UNDERSTAND VIRTUAL  
20 ENVIRONMENT AGENT AND THESE THOUSANDS OF PAGES, WE NEEDED TO DO  
21 SOMETHING, IN A CASE IN WHICH WE FILED AND WON THREE MOTIONS,  
22 IS MORE THAN IRONIC.

23 AND THEY HAVE THE PROCESS EXACTLY BACKWARDS. THEY TRIED  
24 TO ADD SOME OF THESE THINGS AND THEY FAILED. AND THAT FAILURE,  
25 IF IT WAS TRUE, IF IT WAS TRUE THAT ALL THEY WERE ADDING WAS A

1 NAME AND THAT THE FUNCTIONALITY WAS ALREADY IN THE CONTENTIONS,  
2 THEY WOULD HAVE WON THE MOTION TO AMEND IN THE FIRST PLACE.  
3 THAT IS WHAT THE CASE LAW SAYS.

4 THEY ARE ACTING LIKE LOSING THAT MOTION GIVES THEM CART  
5 BLANCHE AND NOW THEY CAN HAVE ANYTHING THEY WANT TO DO.  
6 THEY'VE GOT THE PROCESS EXACTLY BACKWARDS. BUT WHAT WILL  
7 BECOME OF THIS IS A PARTY THAT TWICE LOST A MOTION TO AMEND AND  
8 LOST A MOTION TO STRIKE, NONETHELESS GETS TO DROP IN EXACTLY  
9 WHAT IT ALWAYS WANTED TO DO, AT THE LAST MINUTE AFTER SUMMARY  
10 JUDGEMENT, TO RECREATE THE MEANING OF ITS EXPERT REPORTS.

11 THE -- WITH RESPECT TO THE SUMMARY JUDGEMENT THING HE'S  
12 REFERENCING, I DON'T HAVE THOSE DOCUMENTS IN FRONT OF ME. I  
13 CAN TELL YOU DEFINITELY MR. WATCHINSKI, AND IT'S IN THE  
14 TESTIMONY, MR. WATCHINSKI SAYS IT'S NOT IN THE VIRTUAL  
15 ENVIRONMENT, RIGHT. THAT [REDACTED] IS NOT IN THE VIRTUAL  
16 ENVIRONMENT. IT'S ALSO NOT TRANSMITTED.

17 AND THEY ARE USING THE PHRASE, VIRTUAL ENVIRONMENT AGENT,  
18 IT IS, IT'S SORT OF THIS MEANINGLESS, GENERIC PHRASE. IN A  
19 VIRTUAL ENVIRONMENT, ANYTHING THAT'S VIRTUAL, AN AGENT. I  
20 MEAN, THAT THE CLASSIC, NO MEANINGFUL NOTICE. AND ON TOP OF  
21 THAT, EVEN IF IT'S A BROAD PHRASE, IT SHOULD BE EXCLUDED.

22 LAST POINT, [REDACTED]

23 AGAIN, FINJAN'S COUNSEL -- I'M NOT -- I DON'T THINK  
24 INTENTIONALLY, BUT LEFT OUT SOME PRETTY IMPORTANT PARTS OF THE  
25 SUMMARY JUDGEMENT ORDER, RIGHT.

1 WE MOVED FOR SUMMARY JUDGEMENT ON EVERY THEORY THAT  
2 INVOLVED TRANSMISSION, THAT INVOLVED THINGS FROM, AS WE  
3 UNDERSTOOD IT, THAT INVOLVED THINGS FROM THE GATEWAY TO THE  
4 SANDBOX. THEY SAID, WE CONCEDE, WHITE FLAG. AND THAT IS  
5 FOOTNOTE 6 ON PAGE 15 OF THE SUMMARY JUDGEMENT ORDER.

6 THAT STUFF IS OUT. OKAY. AND IN FACT, AT THE TOP OF THAT  
7 PAGE, JUDGE FREEMAN DESCRIBED ALL SEVEN OF THESE COMPONENTS AND  
8 SAID THEY ARE ALL COMPONENTS OF THREATGRID AND [REDACTED]

9 SO WITH THEIR ADMISSION THAT [REDACTED] -- THAT THE LANGUAGE  
10 THEY ARE TRYING TO SUBSTITUTE IN IS CLEARLY TRANSMITTED, THAT'S  
11 IT, I MEAN, THE SUMMARY JUDGEMENT ORDER MAKES CLEAR THAT THESE  
12 THINGS ARE NOT -- AS THEY ARE PRESENTED, ARE COMPONENTS OF  
13 THREATGRID AND [REDACTED] AND THE DISCLOSURE OF THEM IN THE  
14 CONTENTIONS WAS TALKING ABOUT THINGS THAT WERE TRANSMITTED FROM  
15 THREATGRID TO THE GATEWAY.

16 AND I SHOULD BE CLEAR BECAUSE I DON'T WANT TO THROW THIS  
17 WORD "TRANSMISSION" AROUND TOO LOOSELY. WE MOVED FOR SUMMARY  
18 JUDGEMENT ON ALL MATTERS TRANSMITTED, ALL COMPONENTS  
19 TRANSMITTED FROM THE GATEWAY TO THREATGRID, OKAY. THEY  
20 CONCEDED THAT NONE OF THOSE WOULD BE MOBILE PROTECTION CODE,  
21 ALL RIGHT. THE DISCLOSURE OF THIS PHRASE THAT THEY ARE USING  
22 WAS, AS I READ THROUGH IN THAT VERY PARAGRAPH, IT IS FROM THE  
23 SANDBOX TO THREATGRID. WITH THAT, IT'S OUT.

24 NOW, THE QUESTION OF WHETHER SOMETHING CAN BE TRANSMITTED  
25 SORT OF WITHIN THREATGRID IS KIND OF A WHOLE DIFFERENT ISSUE

1 AND IT SIMPLY WASN'T BRIEFED. BUT THAT'S COMPLETELY BESIDE THE  
2 POINT WHAT THESE THINGS ARE.

3 TWO OTHER POINTS. NUMBER ONE. THE PHRASE THEY ARE TRYING  
4 TO USE, "PARAMETERS TO RUN THE SAMPLE FILE OR URL," THAT'S  
5 THEIR PHRASE, THAT'S WHAT THEY HAVE TO HAVE-

6 THE COURT: I UNDERSTAND. I UNDERSTAND, MR. GAUDET.

7 MR. GAUDET: RIGHT.

8 IT IS SO GENERIC THAT THAT IS THE SAME PHRASE THEY  
9 PROPOSED FOR COMPONENTS THAT WE WON SUMMARY JUDGEMENT ON, AND  
10 THEY LOST SUMMARY JUDGEMENT ON.

11 BY DEFINITION, THAT CAN'T BE SPECIFIC ENOUGH TO PUT US ON  
12 NOTICE. AND IT'S MEANINGLESS, "PARAMETERS TO RUN THE SAMPLE  
13 FILE OR URL," IT COULD BE ANYTHING.

14 LAST POINT IS THEY DID SPECIFICALLY SEEK LEAVE TO ADD  
15 [REDACTED] AND IT WAS DENIED. AND I DON'T KNOW HOW  
16 MUCH MORE A PARTY CAN LITIGATE AND WIN AN ISSUE THAN OPPOSING A  
17 MOTION TO AMEND THE VERY TERM, RIGHT, AND WINNING IT, SUCH THAT  
18 BY DEFINITION, THE TERM AND CORRESPONDING FUNCTIONALITY ARE NOT  
19 IN THE INFRINGEMENT CONTENTIONS AND THEN SEE A REPORT WITH THE  
20 VERY SAME TERMS AND THEN SEE THAT PARTY GET TO JUST SWAP IN A  
21 GENERIC PHRASE AND KEEP EXACTLY THE FUNCTIONALITY IN IT.

22 IT MAKES THE ENTIRE PROCESS OF US WINNING THE INFRINGEMENT  
23 CONTENTION MOTIONS, WINNING THE MOTION TO STRIKE, COMPLETELY  
24 IRRELEVANT.

25 AND PERHAPS THE MOST IMPORTANT POINT, YOUR HONOR, IS



1 FINJAN DOESN'T DESERVE THE BENEFIT OF THE DOUBT AT ALL. THIS  
2 WOULD HAVE BEEN SO EASY, THIS WOULD HAVE BEEN A SENTENCE TO PUT  
3 US ON REAL NOTICE. BUT INSTEAD, WE GET THOUSANDS AND THOUSAND  
4 THOUSANDS OF PAGES OF THINGS THAT ARE DESIGNED TO KEEP US  
5 GUESSING AND FLY AROUND AND TRY TO FIGURE OUT WHAT THEY ARE  
6 TALKING ABOUT.

7 AND ESPECIALLY AFTER ALL THE MOTIONS THEY LOST, THEY DON'T  
8 DESERVE THE BENEFIT OF THE DOUBT ON ANY OF THIS, IT'S VERY  
9 STRAIGHTFORWARD. AND YOU KNOW, DESPITE IT BEING AN HOUR AND  
10 45 MINUTES, IT COMES DOWN TO A VERY EASY QUESTION, WAS [REDACTED]  
11 [REDACTED] OR ITS FUNCTIONALITY OR [REDACTED] AND ITS  
12 SPECIFIC FUNCTIONALITY, IN A NIT PICKY WAY, DISCLOSED IN THE  
13 INFRINGEMENT CONTENTIONS? IF THE ANSWER IS NO, THEN THERE IS  
14 ABSOLUTELY NO BASIS TO PERMIT THEM TO AMEND THESE REPORTS.

15 AND YOUR HONOR, THAT'S EVERYTHING THAT I HAVE

16 THE COURT: ALL RIGHT. THANK YOU.

17 THANK YOU BOTH FOR TAKING ON THIS CHALLENGING MOTION AND  
18 CHALLENGING PAPERWORK AND DOING IT IN A TELEPHONIC HEARING. I  
19 APPRECIATE THAT.

20 I REMAIN CONCERNED OF, KIND OF COMING BACK FULL CIRCLE  
21 WHERE I STARTED WHICH IS, IT'S NOT CLEAR TO ME WHAT CISCO IS  
22 ASKING ME TO CITE. THERE IS BEEN SOME ENLIGHTENING DISCUSSIONS  
23 HERE TODAY, AND I WILL TAKE THAT UNDER CAREFUL CONSIDERATIONS  
24 AND MAKE A DETERMINATION AS IT'S WHAT I WAS DIRECTED BY JUDGE  
25 FREEMAN TO CONSIDER, AND WHETHER IT'S APPROPRIATELY BEFORE ME.

1 I THINK IT WOULD BE HELPFUL TO MR. GAUDET FOR ME TO  
2 RECEIVE FROM CISCO, I HAVE FINJAN'S EXHIBIT 2, THE REDLINE OF  
3 THE JULY VERSION OF THE REPORT THAT I BELIEVE BRING THOSE UP TO  
4 MARCH 30TH, AND I WOULD LIKE YOU TO IDENTIFY BY PARAGRAPH  
5 NUMBER, WHICH PARAGRAPH YOU VIEW THE SUBSTITUTIONS ARE  
6 PROBLEMATIC.

7 MR. GAUDET: THANK YOU, YOUR HONOR. WE WILL  
8 ABSOLUTELY DO THAT.

9 WHAT TIME FRAME DID YOU WANT --

10 THE COURT: AND I APPRECIATE THAT THAT IS A, YOU  
11 KNOW, AGAIN, 2500 PAGES OR WHATEVER IT IS, BUT IT IS REDLINED,  
12 AND I WOULD ASSUME YOU COULD DO THAT WITH SOME -- I NEED  
13 SOMETHING TO LOOK AT TO GIVE BETTER CONTEXT TO THE ARGUMENTS  
14 PRESENTED ON BOTH SIDES TODAY.

15 MR. GAUDET: YOUR HONOR, WE WILL DO THAT.

16 AND ACTUALLY, LET ME ASK TWO QUESTIONS.

17 MY UNDERSTANDING OF THE WAY THAT EXHIBIT 1 AND THEN  
18 EXHIBIT 2 WORKED IS THE FIRST ONE WAS A REDLINE OF THE ORIGINAL  
19 REPORT AGAINST THE FIRST PROPOSED AMENDED REPORT, AND THEN THE  
20 SECOND ONE WAS A REDLINE OF THE FIRST REPORT -- AMENDED REPORT  
21 AGAINST THE SECOND AMENDED REPORT.

22 SO IN OTHER WORDS, THAT FINAL EXHIBIT YOU ARE REFERENCING  
23 MIGHT NOT -- MIGHT ALREADY HAVE -- MIGHT NOT REFLECT ALL THE  
24 SUBSTITUTIONS THAT WERE MADE.

25 SO WHAT I PROPOSE IS WE ACTUALLY GO THROUGH BOTH OF THEM

1 AND SEND YOU A LIST ON BOTH OF THEM, YOU KNOW, TO ACHIEVE THAT  
2 SAME GOAL. THE POINT IS WE WILL SHOW YOU A FULL LIST. AND IF  
3 I COULD JUST SAY, WE WILL GET THOSE TO YOU AS QUICKLY AS YOU  
4 WOULD LIKE IT. WHAT WOULD BE THE TIME FRAME THAT YOU WOULD  
5 LIKE TO SEE THIS?

6 THE COURT: WELL, YOU ALL ARE ON A VERY SHORT LEASH  
7 WITH JUDGE FREEMAN BECAUSE YOU HAVE YOUR PRETRIAL NEXT WEEK, SO  
8 THE SOONER YOU CAN GET IT TO ME, THE BETTER.

9 MR. GAUDET: WITH THAT UNDERSTANDING, WE WILL GET IT  
10 TO YOU AS QUICKLY AS WE POSSIBLY CAN. THAT'S EVERYTHING WE  
11 NEED TO HEAR, YOUR HONOR.

12 MR. KAZI: YOUR HONOR, CAN I --

13 THE COURT: YEAH. I'M TRYING TO BE REALISTIC GIVEN  
14 EVERYONE'S -- THE SITUATION WE ARE ALL OPERATING UNDER. BUT IN  
15 A PERFECT WORLD WHERE I COULD READ IT, I WOULD WANT IT  
16 TOMORROW, 24 HOURS, BUT I APPRECIATE IT'S NOT THAT SIMPLE.

17 MR. GAUDET: YOUR HONOR, WE WILL ABSOLUTELY ENDEAVOR  
18 TO GET IT TO YOU IN 24-HOURS AND IF IT'S NOT, IT WILL BE  
19 48 HOURS. BUT WE UNDERSTAND THE URGENCY UNDER THE  
20 CIRCUMSTANCES.

21 THE COURT: MR. KAZI, WAS THAT YOU ASKING TO BE  
22 HEARD?

23 MR. KAZI: NO. NOTHING FURTHER, YOUR HONOR.

24 THE COURT: ALL RIGHT.

25 ALL RIGHT. OKAY. THANK YOU ALL AGAIN VERY MUCH.

1 MADAM COURT REPORTER, THANK YOU, AND MY COURT DEPUTY FOR  
2 GETTING US ORGANIZED AND ON THE LINE. AND IF I NEED ANYTHING  
3 FURTHER FROM THE PARTIES, I WILL BE IN TOUCH.

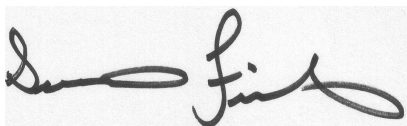
4 THANK YOU. MATTERS SUBMITTED, AND WE ARE ADJOURNED.

5 (THE PROCEEDINGS IN THIS MATTER WERE CONCLUDED.)  
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**CERTIFICATE OF REPORTER**

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR  
CERTIFICATE NUMBER 13185

DATED: 4/22/20